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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 618

INTERNATIONAL BASIC ECONOMY CORPORATION,
PETITIONER,

LUIS BLANCO LUGO,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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In the
Supreme Court of the United States

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No.

INTERNATIONAL BASIC ECONOMY CORPORATION,
PETITIONER,

v.

LUIS BLANCO-LUGO,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The petitioner, INTERNATIONAL BASIC ECONOMY CORPORATION, (herein called IBEC) prays that a Writ of Certiorari issue to review the judgment of United States Court of Appeals for the First Circuit entered in the above case on November 6, 1959.

Opinions Below

The first opinion of the Court of Appeals for the First Circuit (R. 5 App. 126*) is reported at 267 F.2nd 263. The

* References to the typewritten record certified by the Clerk of the Court of Appeals are given first as R. . References to the Appendix attached to this petition are given as App. . Since the record below was not printed, petitioner has, for the convenience of the Court, printed in the Appendix, portions of the record referred to in the petition.

second opinion (R. 293, App. 130) of this court, handed down November 6, 1959, has not yet appeared in the Federal reports. The Supreme Court of Puerto Rico rendered no opinion. The opinion of the Superior Court of Puerto Rico is not officially reported, but is annexed hereto (R. 24, App. 9).

Jurisdiction

The judgment of the Court of Appeals for the First Circuit was made and entered on November 6, 1959 (R. 293, App. 130), and a copy hereof is appended to this petition in the Appendix at p. 130. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

This case, commercial in its origin, presents, at this state, substantial and significant questions both of basic fairness and of the breadth of judicial review in the Federal judicial system. The case has been heard only once on its merits before Judge Luis Polo, of the Tribunal of the First Instance of Puerto Rico, a judge whose partiality and bias appears on the face of his opinion and judgment. No other Court has reviewed this judgment. No Federal court has been in a position to review this judgment. Under recent Puerto Rican legislation adopted in 1958 even this Court may not be able to review the judgment.

The heart of this case lies in the limitations which may be placed on this Court's jurisdiction over cases arising under law created by the United States: Can a legislature whose sovereignty emanates from the United States deny this Court the opportunity to review a final judgment of an inferior tribunal whose powers equally depend upon this Federal grant of authority? Under the new Puerto Rican

legislation, Puerto Rico is the only jurisdiction within the Federal system of law where a litigant may be denied the possibility of a judgment by a local court being reviewed in full by this Court or by any Federal Court. The validity of this Puerto Rican legislation which results in such an extraordinary denial of access to the highest court of the land and to any Federal court is at issue here.

Accordingly, the following questions are presented to this Court:

1. May a legislature, within the system of Federal law, and acting under a delegation of power from Congress, enact a statute which effectively denies opportunity of review by this Court of a final judgment of an inferior local tribunal, which also owes its authority and power to Congress?

2. May the legislature of Puerto Rico enact a law which denies opportunity of review by the Court of Appeals for the First Circuit without violating both the Constitution of Puerto Rico approved by Congress and the right of appeal given litigants in Puerto Rico by 28 U.S.C. Sec. 1293?

3. Should the Court of Appeals for the First Circuit have reviewed the judgment of the Superior Court of Puerto Rico when the Supreme Court of Puerto Rico refused to review this judgment?

4. Was it a patent abuse of discretion by the Supreme Court of Puerto Rico to refuse to review a case where the partiality and bias of the judge deciding the case appeared on the face of the opinion and judgment?

Constitutional Provisions and Statutes Involved

1. 62 *Stat.* 929, 28 *U.S.C.A.* Sec. 1293 (1948):

"The courts of appeals for the First and Ninth Circuits shall have jurisdiction of appeals from all final decisions of the supreme courts of Puerto Rico and Hawaii, respectively, in all cases involving the Constitution, laws or treaties of the United States, or any authority exercised thereunder, in all habeas corpus proceedings, and in all other civil cases where the value in controversy exceeds $5,000, exclusive of interest and costs."

2. 64 *Stat.* 319, 48 *U.S.C.A.* Sec. 731(d) (1950):

"Upon adoption of the constitution by the people of Puerto Rico, the President of the United States is authorized to transmit such constitution to the Congress of the United States if he finds that such constitution conforms with the applicable provisions of sections 731b-731e of this title and of the Constitution of the United States.

Upon approval by the Congress the constitution shall become effective in accordance with its terms."

3. *Constitution of Puerto Rico*, Article V, Sec. 3 (1952):

"The Supreme Court shall be the court of last resort in Puerto Rico and shall be composed of a Chief Justice and four Associate Justices. The number of Justices may be changed only by law upon request of the Supreme Court."

4. Title 4, Sec. 37, *Laws of Puerto Rico Annotated* (1958):

"(a) Except as provided in clause (d) of this section, final judgments rendered by the Superior Court in civil cases involving or deciding a substantial constitutional question under the Constitution of the United States or the Constitution of Puerto Rico, and final judgments in criminal cases originated in the Superior Court, shall be appealable to the Supreme Court. . . ."

"(b) Any other final judgment of the Superior Court may, on request of the party aggrieved, be reviewable by the Supreme Court, by way of certiorari issued at the discretion of the court. . . ."

"(c) The Supreme Court of Puerto Rico may, in the exercise of its discretion, issue a writ of certification to bring forthwith before it and to hear and resolve any case pending on appeal or review pending before the Superior Court, if it deems that the public importance thereof justifies a deviation from the regular procedure and a direct adjudication by the Supreme Court. . . ."

"(d) Judgments rendered by the Superior Court in appeals coming from the District Court and in proceedings for review, based on the record of the proceedings had at the administrative level, or by way of trial de novo, of the rulings, orders or resolutions of administrative organizations, may be reviewed by the Supreme Court by way of certiorari to be issued at its discretion and not otherwise."

"(c) Any decision of the Superior Court may be reviewed by the Supreme Court by way of certiorari to be issued at its discretion, and not otherwise."

Statement

This case began with a plan of the respondent, Blanco-Lugo, to take advantage of certain Puerto Rican merchants. Failing in this plan, in which he hoped to use the petitioner's credit to his profit and to the detriment of the Puerto Rican merchants, Blanco-Lugo sued the petitioner in the Superior Court of Puerto Rico, San Juan Section. Here, there occurred a gross and grotesque miscarriage of justice. This miscarriage of justice has been prolonged and maintained by the existence of Puerto Rican legislation enacted in 1958 which precludes review by the Court of Appeals for the First Circuit or by this Court.

The respondent, Blanco-Lugo, is a lawyer and a member of the Bar of Puerto Rico. The petitioner, IBEC, a New York corporation, was organized by the Rockefellers (R. 118, App. 21) as a means of bringing American capital and methods to Latin America.

In May 1956, IBEC looked into the possibility of buying a chain of supermarkets in Puerto Rico. Accordingly, it authorized its lawyer in Puerto Rico, one Gonzalez, to investigate the possibility of purchasing this chain (R. 25, App. 10). To protect the IBEC interest in the transaction, Gonzalez, in turn, asked Blanco-Lugo, a member of the Puerto Rican bar not identified with the IBEC interests, to inquire into the possibility of purchase (R. 25, App. 10).

On June 24, 1956, a conference was held between the owners of the supermarkets and Gonzalez and one Fonseca, local manager of the Supermarket Division of IBEC (R.

27, App. 11). At the conclusion of the conference, Gonzalez promised to recommend to the authorized officers of IBEC the purchase of the supermarkets at the price of $680,000 (R. 27, App. 12).

The supermarkets were in a failng condition and an attachment of their property was threatened by the Puerto Rican merchants organized as the Chamber of Wholesalers (R. 26, App. 10). The debts owed to the Chamber by the supermarkets amounted to approximately $169,000 (R. 30, App. 14). On June 25, 1956, Blanco-Lugo decided to purchase these debts with his own money. Accordingly, he personally borrowed the money to make the purchase (R. 145, App. 40). It was his plan that he and the lawyer for the supermarkets would both make a profit by buying the debts at 50% of their true value (R. 150, App. 43-44). According to Blanco-Lugo's testimony, his associate spoke of the "Cadillacs that they were all going to buy and the trip to Europe that he was going to take with the reduction that he was going to obtain in the purchase of the credits" (R. 150, App. 43).

In short, Blanco-Lugo had what he thought was a fool-proof scheme to buy dollars for fifty cents. The Chamber of Wholesalers was totally ignorant of who the possible purchaser of the supermarkets was. It would be eager to realize even fifty cents on the dollar for its debts. Blanco-Lugo would buy the debts at one-half of their true value; realize one hundred cents on the dollar on them when IBEC bought the supermarkets; give, as he testified he magnanimously planned to do, some proportion of the saving to IBEC; and still be left with a substantial profit (R. 150, App. 44). The Chamber, in fact, acted as Blanco-Lugo had hoped, only insisting on a settlement of sixty-two and one-half cents on the dollar, and Blanco-Lugo paid the

Chamber approximately $105,000 of his own money in return for the claims of the Chamber against the supermarkets (R. 30, App. 14).

Unfortunately for Blanco-Lugo, this plan of outwitting the Puerto Rican merchants with whom he was dealing backfired. IBEC did not accept Gonzalez's recommendation of purchasing the supermarkets. The responsible officers of IBEC refused to buy the supermarket chain at all (R. 234, App. 97). Blanco-Lugo then found himself in the position of having paid $105,000 of his own money for claims against the supermarkets which were no longer particularly valuable. To save himself from this precarious position, he brought suit against IBEC and Gonzalez asserting that the petitioner, through Gonzalez, had authorized him to purchase the claims against the supermarkets for the petitioner's account.

Apart from the inherent improbability of Blanco-Lugo's contention that a reputable American firm coming to Puerto Rico would wish to make its debut by secretly taking advantage of an organization of Puerto Rican wholesalers, Blanco-Lugo's contention was vigorously denied by the officers of IBEC (R. 18, R. 20, App. 5-7). Blanco-Lugo presented no evidence showing that either he or Gonzalez had been authorized by IBEC to purchase either the supermarkets or the claims against them. Gonzalez testified he had no authority to purchase the credits or the supermarkets, (R. 22, App. 8). The Trial Judge in his findings of fact made no finding that either Blanco-Lugo or Gonzalez had been authorized by IBEC to purchase the supermarkets or the credits. The furthest Gonzalez himself ever went with respect to the purchase of the supermarkets themselves was to make a recommendation (R. 27, App. 12). The only findings on agency which the Trial Judge made are findings 14, 15 and 16 that Gonzalez acted "in

the name of IBEC" and that the transaction was for the benefit of IBEC and incidental "to the principal negotiation" (R. 33, App. 15-16).

Despite the absence of evidence or the crucial finding of fact that IBEC had authorized Gonzalez to buy the supermarkets and the credits as an incident to the purchase of the supermarkets, the Trial Judge in his conclusions of law ruled that Gonzalez had acted at all times as IBEC's agent and that he had authorized Blanco-Lugo to make the purchases and had authority from IBEC so to do (R. 33, App. 16). This conclusion of law was reached without a shred of supporting evidence in the record, as may be seen from the respondent's own testimony in this record (R. 113-179, App. 17-64), and from the depositions of petitioner's officers (R. 18-24, App. 5-7). It was reached without any finding of fact to support it. It was reached at the same time that the judge dismissed the case against Gonzalez. Moreover, Judge Polo's judgment went further and showed bias on its face. He found that the petitioner had acted "with obstinacy" in defending this unjustified claim at all (R. 35, App. 17). He ordered the petitioner to pay punitive damages of $10,000 of attorney's fees, in addition to the judgment (R. 35, App. 17).

IBEC petitioned for a Writ of Review to the Supreme Court of Puerto Rico. It was unable to obtain a transcript of the oral evidence before the Superior Court within the thirty days after the entry of a copy of the Writ of Judgment permitted by the Rules of Civil Procedure, 32 *Laws of Puerto Rico Annotated*, Appendix, Rule 53 (R. 254, App. 111-112). There was, however, presented a record to the Supreme Court of Puerto Rico consisting of direct testimony of the respondent, sworn depositions of Messrs. Bradford and Levy, officers of the petitioner, and the sworn deposition of Gonzalez (R. 18-23, 113-179, App. 4-8, 17-64). On November 10, 1958, the Supreme Court of

Puerto Rico denied the Writ (R. 240, App. 101), and on December 5, 1958, it denied a motion of IBEC for reconsideration (R. 272, App. 113).

IBEC then sought review of the judgment of the Supreme Court of Puerto Rico under 28 U.S.C., Sec. 1293 providing that the Court of Appeals of the First Circuit had jurisdiction to review judgments of the Supreme Court of Puerto Rico. IBEC sought to enlarge the record on appeal by incorporating the transcript of the proceedings in the Superior Court which it had not been able to present to the Supreme Court of Puerto Rico. The Court of Appeals denied this motion May 21, 1959 (R. 5, App. 126). On November 6, 1959, the Court of Appeals granted the respondent's motion to affirm the judgment of the Supreme Court of Puerto Rico (R. 293, App. 130).

The law under which the Supreme Court of Puerto Rico acted in denying review is a new provision of Puerto Rican law, Law No. 115, enacted June 26, 1958, *Laws of Puerto Rico Annotated*, Title 4, Sec. 37. This law gives the Supreme Court of Puerto Rico jurisdiction in its complete discretion to refuse to review a nonconstitutional civil case decided by a lower tribunal. Under 28 U.S.C. § 1293, the Court of Appeals for the First Circuit has jurisdiction only to review final judgments of the Supreme Court of Puerto Rico. Accordingly, the effect of this statute, where the Supreme Court of Puerto Rico refused to exercise its discretion, was, in the opinion of the Circuit Court of Appeals, to leave open for review only the question of whether the Supreme Court of Puerto Rico abused its discretion in denying review. The statute effectively prevented a review on the merits by the Circuit Court of Appeals (R. 295, App. 132). Similarly, the statute prevents a review on the merits by this Court.

Reasons for Granting the Writ

This case involves a sharp challenge to the Federal judicial power by a legislature whose power is itself Federal in origin. Under the legislation enacted by Puerto Rico in 1958, Puerto Rico is now a Federal jurisdiction where litigants may be denied the possibility of having a final judgment by a lower court reviewed by this Court or by any Federal court. The petitioner has met this challenge by insisting on its right in the Court of Appeals for the First Circuit to a full Federal review under 28 U.S.C. § 1293. The Court of Appeals accepted the indirect legislative curbing of its power of review (R. 7, App. 128).* The petitioner seeks vindication in this Court of its right of access to the Court of Appeals and this Court which is denied it by the action of the court below.

The context of the issue is set by some basic postulates of Federal power and jurisdiction. "Both the territorial and Federal laws and the courts, whether exercising Federal or local jurisdiction, are creations emanating from the same sovereignty", *Puerto Rico* v. *Shell Co.*, 302 U.S. 253, 264 (1937). The local law of Puerto Rico and the decisions of its courts depend on the authorization given by Congress, and the delegation of Federal sovereignty to the legislature and Courts of Puerto Rico. It is the Federal character of the power of the Puerto Rican judiciary which permits Congress to lodge a power of review of these decisions in a Federal Court of Appeals. Under the relevant provisions of Article III, Sec. 2, Clause 1, of the Constitution of the United States, the judicial power extends only

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* Having rejected the petitioner's position in denying a motion to enlarge the record (R. 5, App. 126) the Court of Appeals failed to discuss the point at all in its second opinion (R. 293, App. 130) although the petitioner had pressed the point in its Points on Appeal and in its Motion for Oral Argument (App. 122, 125).

to cases arising under "the laws of the United States". It is thus plain that any power of review by the Federal Courts of Puerto Rican law depends upon the Federal origin of the judicial power of Puerto Rico. As this Court has further said: "The power which Congress constitutionally may delegate to a territory (subject of course to 'the right of Congress to revise, alter, and revoke,' *Hornbuckle* v. *Toombs*, 18 Wall. 648, 655) covers all matters 'which, within the limits of a State, are regulated by the laws of the State only,' ". *District of Columbia* v. *John R. Thompson Co., Inc.*, 346 U.S. 100, 106 (1953). It has never been doubted by this Court that the power of a territorial legislature is a power federally delegated by Congress.

What is the effect on these fundamental postulates as to Federal sovereignty and the Federal origin of Puerto Rican law of the creation of a Constitution for Puerto Rico by 64 Stat. 319, adopted July 3, 1950? This legislation purports to give Puerto Rico the status of a commonwealth. This is a term unique in our governmental system. Does it imply that a unique entity has been created? The Courts of Appeal have divided as to its significance. In *Detres* v. *Lions Building Corporation*, 234 F.2nd 596 (7th Cir. 1956), Judge Swaim quoted *Senate Report No. 1779*, 81st Cong., 2nd Sess., on the act authorizing the Puerto Rican Constitution, which said, "The bill under consideration would not change Puerto Rico's fundamental political, social, and economic relationship to the United States", and the Court concluded, "The above expressions all indicate that the persons interested in and responsible for the act did not think that Puerto Rico was thereby being changed from a territory to some other political entity." On the other hand, in *Mora* v. *Mejias*, 206 F. 2nd 377 (1st Cir. 1953), Chief Judge Magruder said at 387, "Puerto Rico has thus not become a State in the Federal Union like the 48 States, but it would seem to have become a

State within a common and accepted meaning of the word." He expressed doubt as to whether it was still a territory subject to Congressional regulation. Chief Judge Magruder has gone further. He has doubted the existence of jurisdiction to review local law decisions of the Supreme Court of Puerto Rico, *Figueroa v. People of Puerto Rico*, 232 F. 2nd 615, 618 (1st Cir. 1956), *Marquez v. Aviles*, 252 F. 2nd 715 (1st Cir. 1958). Thus, it was without reluctance in the present case that the Court of Appeals for the First Circuit accepted the Puerto Rican statute which, in effect, lopped off its jurisdiction. (R. 7, App. 128).

It is against this background of doubt raised by Chief Judge Magruder and the clash of opinions of the Circuit Courts of Appeals that the question is raised here as to whether the legislature of Puerto Rico had authority to make the review of the Supreme Court of Puerto Rico discretionary. If Judge Magruder is right, Puerto Rico is an entity unique in our system of Government; it does not derive its power from the Federal power; and it has the right to prevent or modify Federal review of decisions of its courts. If Judge Swaim is right, Puerto Rico is still a territory and it may not overstep the delegation of power made to it by Congress, *Granville Smith v. Granville Smith*, 349 U.S. 1 (1955). The petitioner asks whether the discretionary authority newly created by the Puerto Rico Legislature conflicts with an Act of Congress. This is a new important question whose solution depends on a relationship not yet authoritatively examined and defined by this Court, the relationship of the United States and the Commonwealth of Puerto Rico.

The Constitution of Puerto Rico exists by virtue of a statute of Congress approving it and stating that it "shall become effective in accordance with its terms." 64 Stat. 319 (1950). The Constitution of Puerto Rico so approved provided expressly in Article V, Sec. 3 that "The Supreme

Court shall be the court of last resort in Puerto Rico". The words "court of last resort" must be construed in the light of the existing Puerto Rican judicial system wherein at the time of the consideration of the Puerto Rican Constitution by Congress and at the time of its final proclamation, as effective the Supreme Court of Puerto Rico had an obligation to review all civil cases tried in the first instance in the Superior Court or in the District Court, the predecessor of the Superior Court, Act of May 15, 1950, c. 432, Section 35 (Puerto Rico), *Laws of Puerto Rico Annotated*, Title 4, Section 37 (prior to 1958 amendment). The words must then be considered in the light of the congressional scheme for Federal review of Puerto Rican decisions. Although, at the time it approved the Puerto Rican Constitution, Congress repealed 39 Stat. 965 dealing with the Puerto Rican judicial system, it pointedly did not repeal 28 U.S.C. 1293 which gave jurisdiction to the First Circuit to review "all final decisions of the Supreme Court of Puerto Rico."

In short, the Constitution of Puerto Rico, as finally presented to the Congress of the United States for approval and as approved by the Congress, solemnly averred that the Supreme Court of Puerto Rico should be the court of last resort under the Constitution and, with this provided for, Congress completed the judicial pattern by leaving in effect the jurisdiction of the Circuit Court of Appeals of the First Circuit to entertain appeals from final decisions of the Supreme Court of Puerto Rico while at the same time repealing other Federal provisions dealing with Puerto Rico. It would appear that Congress approved the constitution of Puerto Rico on the understanding that it was in harmony with the system of judicial review provided by 28 U.S.C. § 1293. Congress expressly provided in 66 Stat. 327 that the Constitution should not be amended unless the amendment was consistent with 64 Stat. 319 providing

that the Constitution was to be effective "in accordance with its terms". As this statute's legislative history shows, it was not intended to change fundamental political relationships with the United States, *S. Rep. No. 1779*, supra. It would seem that a change in the basic pattern of judicial review of Puerto Rican decisions is a change in the basic relationship. The petitioner, in claiming its rights under 28 U.S.C. § 1293, asserts that its position is fully supported by the limited delegation of power by Congress to Puerto Rico, a delegation which did not provide for a legislative amendment indirectly effecting a fundmental change in relationship and did not give the Puerto Rico legislature authority to undermine or modify 28 U.S.C. § 1293.

Further, the Court of Appeals in its first opinion in this case intimated that it might have authority to review the judgment of the Superior Court of Puerto Rico. (R. 8, App. 129). The Court of Appeals indicated that possibly 28 U.S.C. § 1293 need not be interpreted literally, but might be interpreted to permit review of the judgment of the highest court in Puerto Rico which had considered the case. If the Court had such authority it should have reviewed the judgment here, as the petitioner had plainly claimed an appeal not only from the Supreme Court of Puerto Rico but from the "validity" of the judgment of the Superior Court. (R. 273, App. 114). Consequently, the Court of Appeals erred either in its intimation that there was such a right of appeal or in failing to grant such an appeal. A right of direct review from the Superior Court of Puerto Rico, in cases where the Supreme Court of Puerto Rico has denied review, is of such importance that this Court should not leave the question up in the air, but should decisively resolve the issue.

The questions presented by the petition involve significant issues as to the extent of judicial review in the federal system and the extent to which a legislature may curb the

jurisdiction of a court within the federal framework of jurisprudence. They are intertwined with an issue of bias and prejudice which strikingly illustrates the danger of leaving decision on the merits to the unreviewable judgment of the Trial Court hearing the case. Accordingly, the petitioner here has raised a fourth significant question: if the Supreme Court of Puerto Rico has a right to exercise discretion in reviewing certain civil cases, is there not a patent and obvious and inescapable error and abuse of this discretion when it refuses to exercise this discretion to review a judgment whose partiality is proclaimed on its face? In this case, there can be no serious doubt that the Trial Judge in giving his opinion and judgment was gravely biased against the petitioner. He imposed liability on the petitioner on a theory of agency without finding any creation of agency by the petitioner. He dismissed the case against Gonzalez on the grounds that Gonzalez had acted within his authority, although Gonzalez had testified that he had no authority to purchase (R. 22, App. 8). He reached the remarkable result that Gonzalez, a lawyer authorized to inquire into the purchase of a chain of stores, whose power was limited to recommending the purchase price, somehow had authority to bind the petitioner to a purchase of $169,000 of debts of the store. This conclusion on the face of the opinion and judgment might raise a doubt as to the impartiality of Judge Polo. When there is added to this opinion and judgment the remarkable statement that the petitioner acted "with obstinacy",* and when a punitive amount of attorney's fees of $10,000 are assessed by the same judge, the conviction of bias is

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*"Obstinacy" has been defined by the Supreme Court of Puerto Rico as follows: "Litigants are guilty of obstinacy where they tenaciously oppose an action for nullity by denying in their answer facts alleged in a verified complaint which are entered in public records or are known from personal knowledge", *Heirs of Trias v. P.R. Leaf Tobacco Co.*, 59 P.R.R. 288 (1941).

inescapable. There is no need to cite the many cases holding that partiality infecting the entire judgment may be revealed by the damages assessed, e.g. *Wiezorek* v. *Ferris*, 176 Cal. 353, 167 P. 234 (1917); *McNamara* v. *McNamara*, 108 Wis. 613, 84 N.W. 901 (1901). In this case, Judge Polo's assessment of damages and his reasons therefor proclaim the prejudice.

Consequently, the petitioner urges that there are several grounds why certiorari should be granted according to the strict standards of Rule 19. A conflict of opinion exists among the Circuit Courts of Appeals as to the status of the Commonwealth of Puerto Rico, and the decision in this case hinges on the status of Puerto Rico. An important question of Federal law which has not been, but should be, settled by this Court is presented by the Puerto Rican legislation whose effect is to chop off the right to judicial review by the Circuit Court of Appeals for the First Circuit and by this Court. Moreover, the Court of Appeals for the First Circuit has left unresolved and awaiting decision by this Court the question of whether there is a Federal right under 28 U.S.C. §1293 to appeal from a judgment of the Superior Court of Puerto Rico to the Court of Appeals directly. Finally, there has been sanctioned such a departure by a lower court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for the Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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IN THE COURT OF FIRST INSTANCE OF PUERTO RICO
SUPERIOR COURT — SAN JUAN PART

Civil No. CS-56-4126, Collection of Money

Luis Blanco-Lugo,
Plaintiff,

v.

International Basic Economy Corporation
and Jose G. Gonzalez,
Defendants.

COMPLAINT

1. Plaintiff, acting pursuant to instructions of the co-defendant Jose G. Gonzalez, given by said co-defendant, in the name and representation of the co-defendant International Basic Economy Corporation, acquired in June 1956, by purchasing from the Insular Chamber of Wholesale Merchants, under certain terms and conditions, for the co-defendant International Basic Economy Corporation, certain existing credits against the corporation Balet & Rodriguez, Inc.

2. In the alternative, the defendant Jose G. Gonzalez, lacking authorization or acting beyond the authorization bestowed on him, gave instructions to the plaintiff to carry out the undertaking referred to in the preceding paragraph.

3. To effectuate said deal, the plaintiff advanced and paid the sum of $104,765.80 plus $1,231.50 for incidental expenses.

4. The defendants have refused and do refuse to reimburse to plaintiff said sums of money advanced by him to accomplish said transaction.

5. The plaintiff prays the Court to enter judgment against the defendants ordering them to pay to plaintiff

the sum of $104,765.80 plus $1,231.50 and $20,000.00 for interest, costs, expenses and attorneys fees.

San Juan, Puerto Rico, August 31, 1956.

(s) F. Ponsa-Feliu
F. Ponsa-Feliu
I. Rodriguez-Moreno
E. Cortes-Garcia
Attorneys for Plaintiff

P.O. Box 2181
401 Plaza Building
San Juan, P. R.

In the United States District Court for
The District of Puerto Rico

Civil No. 9480

Luis Blanco-Lugo,
Plaintiff,
v.
International Basic Economy Corporation
and Jose G. Gonzalez,
Defendants.

ANSWER OF INTERNATIONAL BASIC ECONOMY CORPORATION

Filed Sept. 6, 1956

Defendant International Basic Economy Corporation for its answer to the complaint herein respectfully shows this Court and alleges:

First Defense

1. Denies the allegations contained in Paragraph 1 of the complaint.

2. On information and belief denies the allegations contained in Paragraph 2 of the complaint, except that it

admits that defendant Jose G. Gonzalez was not authorized by this defendant to enter into any of the transactions or take any of the steps alleged to have been taken by him in Paragraphs 1 and 2 of the complaint.

3. Denies the allegations contained in Paragraph 3 of the complaint.

4. Admits the allegations contained in Paragraph 4 of the complaint, except that it denies that plaintiff advanced the sums therein referred to, or any other sums, for the account of this defendant.

SECOND DEFENSE

1. The complaint fails to state a claim upon which relief may be granted.

WHEREFORE, defendant International Basic Economy Corporation having fully answered the complaint herein, demands judgment, together with its costs, dismissing this action.

San Juan, Puerto Rico, this 6th day of September 1956.

E. T. FIDDLER
CARLOS J. FAURE
ANDRES GUILLEMARD FAJARDO

By: (s) E. T. FIDDLER
Attorneys for Defendant
International Basic
Economy Corporation
6th Floor Chase Bank Bldg.
San Juan, Puerto Rico

Served with copy this 6th day of September 1956

F. PONSA-FELIU
L. RODRIGUEZ MORENO
E. CORTES-GARCIA

By: (s) F. PONSA-FELIU
Attorneys for Plaintiff

[Same Title—Superior Court]

MOTION FOR SUMMARY JUDGMENT

Defendant International Basic Economy Corporation prays that summary judgment be rendered in its favor pursuant to the provisions of Rule 56 of the Rules of Civil Procedure. In support of this motion we submit the following documents:

1. Sworn statement of Wallace B. Bradford, Vice President of IBEC.
2. Sworn statement of Lawrence H. Levy, Secretary of IBEC.
3. Sworn statement of Jose G. Gonzalez.

In addition to the aforesaid sworn statements the defendant International Basic Economy Corporation shall use in support of its motion for summary judgment, the following depositions:

1. Deposition of Luis Blanco-Lugo.
2. Deposition of Jose G. Gonzalez.
3. Deposition of Tomas I. Nido.
4. Deposition of Eugenio S. Belaval.

San Juan, Puerto Rico, April 11, 1957.

HARTZELL, FERNANDEZ & NOVAS
By: (s) JOSE L. NOVAS
For the International Basic Economy Corporation

CERTIFICATE OF SERVICE BY MAIL

I, JOSE L. NOVAS, one of the attorneys for the defendant in the above-entitled case, CERTIFY:

That today I have sent by mail in a duly stamped envelope a copy of the aforesaid motion to Mr. F. Ponsa-Feliu, one of the attorneys for the plaintiff, at the Plaza Building, San Juan, Puerto Rico, and to Mr. Jorge L.

Cordova, attorney for co-defendant Jose G. Gonzalez, at Ochoa Building, San Juan, Puerto Rico.

San Juan, Puerto Rico, April 11, 1957.

(s) JOSE L. NOVAS

State of New York
County of New York, ss.:

On this 19th day of February, 1957, before me, the undersigned Notary Public in and for the County and State of New York, personally appeared WALLACE D. BRADFORD, personally known to me and being duly sworn deposes and says:

That he is Vice President, and during the entire calendar year 1956 was Vice President of International Basic Economy Corporation, a new York corporation, and as such was in charge of and was personally familiar with the supermarket activities of said corporation in Puerto Rico, subject to and under the direction of the Board of Directors of the corporation;

That at no time during the calendar years 1956 and 1957 did deponent as Vice President of said corporation or in any other capacity, nor did any other person, firm or individual, acting under his direction, negotiate for the purchase of, offer to purchase, or purchase or in any manner acquire on behalf of International Basic Economy Corporation any claims whatsoever against Balet & Rodriguez, Inc., doing business in the Commonwealth of Puerto Rico, or against any corporation, firm or individual doing business under a similar name, or against any other person, firm or individual owning or having any interest in any store or stores in Puerto Rico known as Truman Supermarkets, or Truman Markets, or bearing the name "Truman".

(s) WALLACE D. BRADFORD
WALLACE D. BRADFORD

Sworn to and subscribed before me in the City of New York, this 19th day of February 1957.

(s) M. Elenore Jones,
M. Elenore Jones,
Notary Public

M. Elenore Jones
Notary Public State of New York
No. 31 7146300
Qualified in New York County
Term expires March 30, 1958

(County Clerk's Certificate).

State of New York
County of New York, ss.:

On this 19th day of February, 1957, before me, the undersigned Notary Public in and for the County and State of New York, personally appeared Lawrence H. Levy, personally known to me and being duly sworn deposes and says:

That he is Secretary and Treasurer of International Basic Economy Corporation, a corporation duly organized and existing under the laws of the State of New York, and as such has charge of the minute books and records of said corporation;

That Mr. Wallace D. Bradford is, and during all the calendar year 1956, was Vice President of said corporation, duly elected to said office by its Board of Directors, and as such was the executive officer in charge of the supermarket activities of said corporation in Puerto Rico, under and subject to the direction of the Board of Directors of the corporation;

That the Board of Directors of said corporation, as appears from the minutes of its meetings, which are in my charge, has at no time considered, deliberated upon, or authorized the said Wallace D. Bradford, as Vice Presi

dent or in any other capacity, or any other officer, employee or attorney representing said corporation, to negotiate for the purchase of, or to purchase or in any manner acquire any claims whatsoever against Balet & Rodriguez, Inc., doing business in the Commonwealth of Puerto Rico, or against any corporation, firm or individual doing business under a similar name, or against any other person, firm or individual owning or having any interest in any store or stores in Puerto Rico known as Truman Supermarkets, or Truman Markets, or bearing the name "Truman".

(s) LAWRENCE H. LEVY
LAWRENCE H. LEVY

Sworn to and subscribed before me in the City of New York, this 19th day of February, 1957.

(s) M. ELENORE JONES,
M. ELENORE JONES
Notary Public
M. ELENORE JONES
Notary Public State of New York
No. 31 7116300
Qualified in New York County
Term expires March 30, 1958

(County Clerk's Certificate)

United States of America
Commonwealth of Puerto Rico
City of San Juan, ss.:

On this 11th day of April 1957, there appeared personally before me Mr. Jose G. Gonzalez, of legal age, married, attorney at law, and resident of San Juan, Puerto Rico, and after being duly sworn states:

1. That he is one of the defendants in Civil Case No. CS-56-4126, before the Superior Court of Puerto Rico, San Juan Part, entitled Luis Blanco-Lugo, plaintiff, v. Inter-

national Basic Economy Corporation and Jose G. Gonzalez, defendants.

2. That it is alleged in the complaint that plaintiff, acting under the instructions of codefendant Jose G. Gonzalez, given by the latter in the name and on behalf of defendant IBEC, acquired by purchase from the Insular Chamber of Wholesalers, for said codefendant, certain credits existing against Balet & Rodriguez, Inc.

3. That the deponent at no time, either directly or indirectly, received any instructions from codefendant IBEC to purchase or acquire in any manner whatsoever the credits mentioned in said complaint or any other credits existing against Balet & Rodriguez, Inc.

4. That at no time, either directly or indirectly, the deponent authorized plaintiff Luis Blanco-Lugo or any other person to purchase any credits or claim against Balet & Rodriguez, Inc., in the name of codefendant International Basic Economy Corporation.

San Juan, Puerto Rico, April 11, 1957.

(s) JOSE G. GONZALEZ,
Deponent

Affidavit No. 190 (copy)

Sworn to and subscribed before me by Jose G. Gonzalez of the aforesaid personal circumstances, whom I personally know, at San Juan, Puerto Rico, on this 11th day of April, 1957.

(s) JOSE M. ARSUAGA,
Notary Public

[Same Title—Superior Court]

ORDER

In view of the motion filed by codefendant International Basic Economy Corporation for summary judgment; and having examined the record of the case, the sworn statements attached to the motion, the opposition of plaintiff

and the depositions contained in the record of codefendant Jose G. Gonzalez, of plaintiff Luis Blanco-Lugo, of Mr. Tomas I. Nido, of Mr. Eugenio S. Belaval, and of Mr. Renato Fonseca, it appears from the record that there is a genuine issue of facts essential to the cause of action which should be determined in a plenary suit and which, therefore, bars a summary judgment.

The motion for summary judgment filed by codefendant International Basic Economy Corporation is denied and the hearing of the case on the merits is set to be held in Courtroom No. 3 of this Court on September 17, 18 and 19, 1957, which shall be done accordingly.

LET IT BE NOTIFIED.

San Juan, Puerto Rico, August 19, 1957.

(s) CARLOS SANTANA-BECERRA
Judge of the Superior Court

[Same Title—Superior Court]

STATEMENT OF THE CASE

This suit was filed by Luis Blanco-Lugo against the International Basic Economy Corporation (which we shall hereinafter call "IBEC") and Jose G. Gonzalez. At the hearing of the case which lasted several days, the parties introduced overwhelming oral and documentary evidence. However, the decision depends fundamentally on the determination of two main questions in connection with which there is a sharp conflict in the evidence:[1]

a) In carrying out certain transactions, did the plain-

[1] It is so admitted by codefendant IBEC in its brief, in which it only raises two questions in support of its motion to dismiss the complaint, to wit: (a) plaintiff did not show by *a preponderance* of the evidence that Gonzalez authorized him, on behalf and as an agent of IBEC, to purchase the credits of the Chamber; and (b) plaintiff did not prove by *a preponderance* of *admissible evidence* the existence of an agency between Gonzalez and IBEC.

tiff act on his own account or at the request of the defendants or any of them?

b) Is IBEC liable for the steps taken by defendant Gonzalez?

FINDINGS OF FACT

After considering the evidence presented, the Court makes the following findings of facts:

1. In May 1956, Renato Fonseca, known as Ray, who was at the time resident manager of the Supermarkets Division of IBEC, informed defendant Gonzalez that said corporation was interested in purchasing a chain of supermarkets already established and in operation, and asked him to take the necessary steps to that effect. Gonzalez called Blanco-Lugo and told him that there was a person interested in acquiring certain supermarkets, but that he did not wish to take the steps personally in order to avoid the identification of the purchaser; that therefore, he asked the plaintiff to investigate, without revealing the name of the interested party, the possibilities of making such a deal. During this conversation they mentioned the possibility of purchasing the Truman Markets.

2. Blanco-Lugo called Rodrigo Otero-Suro, counsel for the Truman Markets, who agreed to have a session with his clients and call plaintiff back. Fonseca called again Gonzalez on this matter and the latter informed him that Blanco-Lugo had not given him any definite information.

3. By the end of June, and as a result of an information that Blanco-Lugo received to the effect that the Chamber of Wholesalers intended to levy an attachment on the Truman Markets, Blanco-Lugo called Gonzalez to make sure that IBEC was still interested in purchasing. After a conference between plaintiff, Otero-Suro, and representatives of Truman, held on June 23, 1956, plaintiff met the latter at the head office of the markets in Hato Rey to acquire certain information Gonzalez asked him to obtain.

After that conference they all went to see Gonzalez at his residence in Santa Maria Development. Gonzalez arranged for a meeting between the local agents of IBEC—Messrs. Fonseca, Aitken, and Reed—and asked the representatives of Truman for additional information.

4. On the evening of June 23, Gonzalez asked Blanco-Lugo to inform the agents of Truman that after having spoken with the agents of IBEC, he suggested a meeting at his residence next day. The agents of IBEC and Truman were present at this meeting, and after general considerations of the business it was agreed to continue the meeting on that same afternoon at the Truman's office. After this preliminary meeting and before the afternoon meeting, Mr. Fonseca telephoned Mr. Bradford in New York and Mr. Provost in Kansas, and informed them of the situation and of the steps that were being taken to purchase the Truman Markets. Mr. Bradford and Mr. Provost are head officers of IBEC. As a result of said telephone call Mr. Provost came from Kansas to Puerto Rico.

5. The agents of IBEC as well as of Truman were present at the meeting on the afternoon of June 24. Co-defendant Gonzalez and Fonseca were the spokesmen of the IBEC group and Mr. Solomon and Mr. Otero-Suro, of the Truman group. At the meeting Gonzalez pointed out to Otero-Suro that it was convenient to avoid a prolonged closing of the groceries, either by reason of the impending attachment of the Chamber of Wholesalers or of a voluntary bankruptcy proceeding that Otero-Suro would file if the Chamber went ahead with its threats. In this connection Gonzalez promised Otero-Suro to advance some money from IBEC to avoid the attachment. During all these dealings defendant Gonzalez repeatedly stated that IBEC was interested in avoiding the attachment and the closing of the markets for a prolonged period, inasmuch

as it was the intention of IBEC to use the expert employees when opening the "Todos Supermarkets".

6. Both groups argued at length on the purchase price. To determine the price they considered, among other factors, the debt owed by Truman to the local suppliers of merchandise, the inventories, cost of equipment, and even an amount for the good will of the business. Finally they agreed on the sum of $680,000, which Gonzalez promised to recommend, but it was stated that in order to close the deal definitively it was necessary to obtain the consent of the lessors in order to assign the contracts of lease of the premises occupied by the markets and to wait for Mr. Provost, who was expected early next day.

7. On the morning of Monday 25, Otero-Suro visited Mr. Eugenio Belaval, Manager of the Chamber of Wholesalers, to obtain the postponement of any action on the part of said entity regarding the attachment of the markets. During the interview a possibility arose that the Chamber might not act if a proposition were made to buy their credits for half of the value, on condition that the proposition be backed by a substantial deposit. To this end Mr. Belaval pointed out that any proposition would have to be made before four o'clock in the afternoon, so they they would have enough time to call the directors and members in order to consider the proposition. Belaval asked Otero-Suro to put the proposition in writing, which the latter did.[2] (Defendants' Exh. "L".)

8. Immediately after this Otero-Suro saw the IBEC group at the office of Gonzalez. Gonzalez suggested that in order not to reveal the name of the purchase of the markets, a person not connected with the IBEC should be sent to make the proposition of buying the credits for half

[2] At this moment Otero-Suro made the proposition in the name of Truman Supermarkets, who were his clients. Neither Blanco-Lugo nor IBEC or its agents knew of this written proposition.

their value and to take a check for $50,000 as a deposit. This check would be given by IBEC. After a brief discussion, this course of action was accepted and Gonzalez suggested that Blanco-Lugo be the bearer of the offer, since he had previous knowledge of the transaction and was a person fully trusted by him. Between eleven and twelve o'clock in the morning Gonzalez called Blanco-Lugo, who accepted the commission.[3] Subsequently, as a result of this telephone conversation between Gonzalez and Blanco-Lugo, Gonzalez accepted the suggestion that Blanco-Lugo should personally raise the funds, thereby ratifying the intention of keeping secret the identity of the purchaser, and that Blanco-Lugo would thereafter be reimbursed by IBEC, in view of the fact that there were certain difficulties which did not permit IBEC to have the funds available in Puerto Rico with the urgency required. We reject the position assumed by the defendant to the effect that the check was merely to be shown to Mr. Belaval. It seems more logical to us, and therefore more feasible, the version given by plaintiff and supported by the testimony of Otero-Suro and Belaval, who are witnesses without any direct relation to any of the parties, to the effect that the check was to be delivered as a deposit for the purchase price of the credits if the proposition was accepted by the Chamber.

9. Between 2 and 3 o'clock in the afternoon of June 25, Blanco-Lugo visited Belaval and made, in the name of his principal, whose name he did not reveal, the proposition to purchase the credits. As required by Belaval, plaintiff handed to him a check for $50,000. This offer was rejected that same afternoon and the check was returned by Belaval to Blanco-Lugo next day. Tuesday morning Belaval called

[3] When Gonzalez spoke with Blanco-Lugo he told the latter that the offer of purchase of the credits was in the name of IBEC, which would supply the deposit, but its identity should not be revealed to the Chamber.

plaintiff between eleven and twelve o'clock and told him that perhaps the transaction could be carried out upon payment of 62½% of the value of the credits, provided he included other credits not yet due which were not included in the complaint filed. Plaintiff told Belaval that he had no authorization to decide as to this new proposition, although he believed the same to be reasonable; but that he would consult his "principal" and let him know. Blanco-Lugo called González over the telephone and the latter authorized him, in the name of IBEC, to accept Belaval's new proposition. The Chamber considered this new proposition and accepted it.

10. Complying with the obligations assumed by him toward the Chamber as per instructions of González, plaintiff paid the balance of $55,997.30 to reach the total amount of the selling price of the credits, at the rate of 62½% of their value, plus expenses.

11. Blanco-Lugo was not supposed to derive any personal benefit from the transaction of the credits. The evidence reveals that the only ones that were to benefit from the deduction were Truman and IBEC. To that effect IBEC was to receive a deduction from the price agreed tentatively in an amount proportionate with the savings obtained by purchasing said credits, for a value less than its cost, as the result of which the terms of the purchase deal of the markets would be much better. Since the price was tentatively fixed at $680,000, if the credits were purchased at 62½% there would be a total reduction of approximately $60,000 and the price would be readjusted proportionately.

12. Complying with this transaction, Blanco-Lugo disbursed and paid to the Chamber the sum of $105,997.30 as follows: $50,000 on June 25, 1956, and the remaining $55,997.30 on the 28th of the same month.

13. On that same Monday afternoon, after plaintiff

visited Belaval at the Chamber and presented to him the purchase proposition and deposited the $50,000 at 3:30 p.m., he met Tomas I. Nido, attorney-at-law, who was going to visit Belaval, and who told Blanco-Lugo that he was carrying a check for $50,000 for the markets deal. Blanco-Lugo asked Nido to give him the check alleging that he had already made the deposit, but the latter told him that the check had been issued in his name (Nido); when Blanco-Lugo asked him to endorse it, Nido answered that it had been issued in his name (Nido) in trust. He did not explain to Blanco-Lugo the specific purpose for which it had been issued,[4] nor did he inform him that IBEC had originally issued a check in favor of Luis Blanco-Lugo, in trust,[5] handed to him a check for $50,000. This offer was repeated

14. Plaintiff purchased the credits from the Chamber for IBEC, according to the instructions codefendant Gonzalez had given him to that effect.

15. The purchase of the credits was an incidental transaction essential to the principal negotiation of purchasing the supermarkets, since IBEC was greatly interested in avoiding the attachment thereon, having repeatedly expressed its desire to avoid said attachment. The transaction of codefendant Gonzalez as to the purpose of those

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[4] Defendant lays great emphasis on the issuance of the check in trust in favor of Nido, and on plaintiff's knowledge of this fact. However, in the absence of an explanation by Nido of the restrictions under which the check was issued, Blanco-Lugo could have assumed that the check could not be indorsed to him because it had been issued for the only purpose of depositing it in the Chamber as an advanced payment of the purchase price of the credits, and for no other purpose.

[5] As agreed in the office of Gonzalez at a meeting held on Monday morning, the 25th, IBEC was to give Blanco-Lugo a check for $50,000 to go to the Chamber. The local representatives of IBEC obtained this check but later, following instructions from the New York office, the check was cancelled and a check was issued instead in Nido's name. Gonzalez did not participate in the conversations in which the substitution of checks was ordered because he was away from his office all afternoon.

credits and the transactions which Gonzalez commissioned to the plaintiff to that effect were carried out for the sole interest and benefit of the principal transaction of co-defendant IBEC, that is, the purchase of the supermarkets.

16. Even after the credits had been purchased, Gonzalez, in the name of IBEC, commissioned Blanco-Lugo to continue taking all steps leading to the purchase of the supermarkets. To that effect plaintiff acquired several propositions signed by the owners of the Truman markets for the sale of these markets.

Conclusions of Law

As a result of the preceding findings of fact, the Court concludes:

1. Codefendant Jose G. Gonzalez acted at all times as agent of IBEC and within the authority conferred upon him, expressly or impliedly, to take steps leading to the purchase of the Truman supermarkets, and his actions and steps are binding on his principal IBEC. The transaction of the purchase of credits was incidental, but necessary, within the principal negotiation of purchasing the supermarkets. (*Restatement Agency*, Sec. 229, p. 507-510, and Sec. 235, p. 526. *Cf. Martinez v. U. S. Casualty Co.*, 79 P.R.R. 561, 565, *Gonzalez v. Cia Agricola*, 76 P.R.R. 373, 376.) The fact that the principal business of purchasing the supermarkets was not consummated does not relieve IBEC of liability for the necessary, incidental and preliminary steps taken by its agents in its own benefit.

2. Blanco-Lugo acted at all times following instructions from Gonzalez and Gonzalez acted on behalf of IBEC. Even though there was no express or implied agency, contrary to what we have affirmatively decided, Blanco acted at all times on behalf of IBEC and not on his own account. We would always be confronted with a situation similar to the management of business in the absence of ratification. In

such case IBEC would likewise be bound to pay Blanco-Lugo any necessary and useful expenses that he might have incurred if the transaction had been carried out in good faith, as happened in this case, if it was intended to avoid imminent and manifest damage (to avoid the prolonged attachment and the bankruptcy proceedings which would have impaired the principal transaction of purchasing the markets, and even if from said transaction IBEC would have derived no profit). (Second Paragraph of Section 1793 of the Civil Code, 31, L.P.R.A. § 5106.)

3. Since Gonzalez acted within the scope of his authority he is not personally liable to plaintiff.

4. IBEC is bound to reimburse and pay to plaintiff the amount of $105,997.30, plus legal interest from the date of the filing of the complaint.

5. Since codefendant IBEC has acted with obstinacy in this case, it is sentenced to pay to the plaintiff attorney's fees, plus costs of litigation.

Judgment shall be entered consistent with the preceding findings of fact and conclusions of law.

Let it be notified.

San Juan, Puerto Rico, September 3, 1958.

(s) Luis R. Polo,
Judge
Superior Court

[Same Title—Superior Court]

STENOGRAPHIC TRANSCRIPT
(Partial)

[101] On April 8, 1958 this case was called to resume the hearing. The parties appeared represented by their respective counsel. The proceedings were as follows:

The Court: Are the parties ready?

Mr. Ponsa: Your Honor, we offer now the testimony of the plaintiff himself.

Sworn Testimony of Mr. Luis Blanco-Lugo

Mr. Ponsa: Q. May it please the Court. Your name, please. A. Louis Blanco-Lugo.

Q. What is your profession? A. I am a lawyer.

Q. Since when have you been a member of the Bar? A. Since 1942.

Q. How old are you? A. Thirty-six years old.

[102] Q. Since when have you been in the private practice? A. Since early in 1943.

Q. Up to then had you been an employee? A. I was law clerk to Chief Justice Del Toro and to Justice Snyder.

Q. When was that? A. During 1942.

Q. Both judges during the same year? A. Yes, sir. When Justice Del Toro retired I was appointed law clerk to Justice Snyder. I also worked for a few months in the Legal Division of the Department of the Treasury.

Q. I understand that after you left your work with the Department of the Treasury you began your private practice? A. First in partnership with Mr. Martinez-Rivera. I worked with colleague Martinez-Rivera.

Q. And since when have you had your own office? A. Since January 11, 1950.

Q. Colleague, besides being a lawyer, are you also a notary public? A. Yes, sir.

Q. In addition to that professional activity that you have mentioned since you joined the Bar until now, have you been engaged in any other business activity, or has that been your only concern? A. Well, if having bought real properties and having sold them is a business, I have been engaged in that business; [103] but I am not engaged in the real estate business.

Q. You say that you have purchased and sold properties? A. Yes, sir.

Q. But have you done it accidentally, or actually engaged in that? A. Purely accidentally.

Q. Outside of that . . . ? A. My business is the profession I practice.

Q. And since when . . . At present do you have your office in San Juan in the Plaza Building? A. Yes, sir.

Q. On the fourth floor? A. Yes, sir.

Q. Colleague, do you know Mr. Jose G. Gonzalez, an attorney-at-law? A. Yes, sir.

Q. Since when are you acquainted with Mr. Gonzalez? A. I believe approximately since 1945.

Q. Since 1945 what has been the nature of your acquaintance with Mr. Gonzalez and your relations with him? To your best recollection when did your friendship start? A. We met by reason of an execution of a sales contract for one of my clients, one of the Garcia-San Miguel brothers to Felipe Vidal. And of course, our acquaintance was at the beginning exclusively on legal matters. It then grew into a close friendship and I would say that about the middle of 1954 it was a very close friendship.

Q. Besides the pure and simple personal friendship was [104] there any other personal relation between you and colleague Gonzalez? A. Personally?

Q. Yes. A. There was a certain degree of kinship due to the fact that I christened one of his daughters.

Q. Do you remember what year was that? A. One or two years before 1954, I can not say exactly.

Q. When you say that you christened a daughter of Mr. Gonzalez, do you mean that you are godfather of Mr. Gonzalez' child? A. Exactly.

Q. Those relations were close and of frequent contact, or how were they? A. I would call them so.

Q. And with the family particularly, with Mr. Gonzalez' wife? A. I would also consider them so.

Q. And your wife with Mr. Gonzalez and his wife? A. Very close.

Q. Did you also know colleague Mr. Rodrigo Otero-Suro? A. Yes, sir.

Q. Could you tell us since when, if you recall? A. More or less since the same time I began to practice my profession.

Q. You also had and have friendly relations with colleague Otero-Suro? [105] A. Friendly, but not intimate.

Q. Friendly? A. Yes, sir.

Q. Would you say that at least of a professional nature? A. Exactly, that is, socially we have no relation except when we meet at some activities of the Bar Association, because we both are members of the Bar Association.

Q. And your relations are such at present? A. Yes, sir.

Q. Do you remember, colleague Blanco-Lugo, when did you take your first step in the matter involved in this suit? A. Yes, sir.

Q. More or less, could you tell us the date? A. I would say it was near the end of May 1954.

Q. Nineteen hundred fifty-four? A. Nineteen hundred fifty-six.

Q. At the end of May 1956? A. Yes, sir.

Q. Should I understand that when a moment ago you mentioned the year 1954 . . . A. I meant 1956.

Q. The first step that you say you took in connection with the matter in this suit at the end of May 1956, what was it about? A. An afternoon during the month of May, at the end of May, I received a telephone call from Mr. Gonzalez.

[106] Q. At your home, or at the office? A. At my office. It was between half past four and five o'clock in the afternoon, more or less.

Q. Please tell us your conversation, at that time, between you and colleague Gonzalez. A. Colleague Gonzalez told me, after the usual greetings, that he had a client who was interested in acquiring a chain of supermarkets, but

because of certain circumstances he could not personally, nor any of the lawyers of his office, undertake the preliminary steps to acquire that chain of markets.

Q. Did he say why. A. He told me that his client, whom he identified at that time as the Rockefellers; were interested in buying, but due to the fact that that name is associated to unlimited wealth, he did not wish to do the business himself in order to prevent any person willing to do the business from inflating, increasing the value upon learning that the firm in question was Rockefeller.

Q. On that occasion, can you tell us whether any specific mention was made of any market or chain of markets? A. I told Mr. Gonzalez that unfortunately I was not connected with the local commerce and I asked him whether he had any specific concern in mind, to which he answered that his client liked the Truman Supermarkets.

Q. What was your intervention or your dealings in connection with this matter? [107] A. The request made at that time by Mr. Gonzalez was to determine whether in this case the owners of the Truman Markets were willing to discuss a transaction of sale.

Q. Inquire whether the owners of the Truman Markets were willing to sell? A. Exactly.

Q. At what time, colleague, did you know who were the owners of the Truman Markets? A. At the time of the conversation I did not know. But Mr. Gonzalez, when I asked him, told me that he knew that one of the persons interested in the Truman corporation was Mr. Perico Balet.

Q. The name of colleague Otero-Suro, mentioned a moment ago, was not mentioned in that conversation at any time? A. Yes, sir, I mentioned it.

Q. How? A. When Mr. Gonzalez told me that Mr. Perico Balet was one of the persons interested, I told him that if that was true I could connect myself through Mr. Otero Suro, whom I knew was their lawyer or had been counsel

of the Balet corporation, because we had participated in a previous suit and I told him I would communicate with Otero-Suro.

Q. In addition to that was there . . . Was that all or was there anything else that you recall now in that conversation? A. When we had already discussed what I have stated, Mr. [108] Gonzalez told me more or less these words: "*Compadre*, you can make some good money there." Naturally I asked him how, and he told me that if I obtained the contract of Truman I was in a position to charge some commission, fees or whatever I wanted to call it, from the Truman people.

Q. Is there anything more on that particular, or in short, was that all as to that aspect at that time? A. That was all.

Q. Tell me, colleague, on any occasion prior to the one mentioned by you, had there been any relation or contact between you and Mr. Gonzalez, of a similar or analogous nature? Do you understand the question?" A. I understand it. Colleague Gonzalez had sent me a number of suits that his office, for some reason or other, could not or was not in a position to handle.

Q. For you to handle as a lawyer? A. To prosecute them as a lawyer. Besides, we were handling a case together which I would consider as important, liquidation of conjugal property.

Q. Together, you and who? A. Colleague Gonzalez.

Q. At that time you were handling it? A. Of Jose Ernesto Janer and Margarita Velazquez Grillo in which Mr. Gonzalez had taken me as associate counsel from the beginning. We had had personal relations in connection with the sale to a client [109] of Mr. Gonzalez, Mr. Lawrence Rockefeller.

Q. When did that transaction take place? A. The transaction took place exactly on Mr. Gonzalez' feastday, St. Joseph's Day, March 19 of that same year, 1956.

Q. Should I understand, then, that about two or three months prior to that telephone call to which you have referred there had been another transaction in which you had sold to a client of colleague Gonzalez a piece of property? A. Yes, sir. I wish to explain that as to that transaction I had been discussing for several weeks propositions and counter-propositions.

Q. Do you mean before March 19? A. Before March 19, all by telephone. We had never come to an agreement because, in my opinion, Mr. Gonzalez was obstinately defending the interests of his client as to the value of the property to be sold.

Q. Going back to the question of the telephone call in May 1956, as a result of that call, what did you do after the call? A. After I finished my conversation with Mr. Gonzalez, I called Mr. Rodrigo Otero-Suro.

Q. Go on. A. And complying with the request that Mr. Gonzalez had made and in which he had asked me not to disclose the name of the client, I asked Otero-Suro if he was the attorney of the owners of the Truman Markets. [110] When he answered in the affirmative I told him that if his clients would be willing to sell the business because I had been asked to obtain a chain of supermarkets for a client.

Q. Tell me, that call to Mr. Otero-Suro, you made it when, in relation to the previous call from Mr. Gonzalez to you? A. Immediately afterwards.

Q. And you were able to get him? A. Yes, sir.

Q. Go ahead. A. We went into general considerations, Otero Suro tried to identify the person for whom I was handling the deal, which, of course, I refused to reveal, and he told me in general terms that his client was not very interested in selling because the business was flourishing, that they had just opened a supermarket in the Metropolitan Development, that it was the best one in Puerto

Rico. And he ended by leaving a door open and saying that it was all a question of price, but since he had not authority he would consult his client and let me know.

Q. Was that the end of the conversation? A. Yes, sir.

Q. Did Otero-Suro call you? A. Otero-Suro did not call me. We met accidentally several days afterwards in the Superior Court, here in the clerk's office. We exchanged some words. I had the impression that they were interested in the business.

[111] Q. After that, what other contact did you have with colleague Gonzalez? A. With colleague Gonzalez?

Q. And when, if you recall? A. I believe that colleague Gonzalez called me before June 24 and told me that Mr. Fonseca was at his office, that he was the Local Manager of the Supermarket Division of I.B.E.C.

Q. And for what purpose did he call you? A. To find out what had been the outcome of my approach to Otero-Suro.

Q. Did you tell him what had been the result? A. I told him my impression was that these gentlemen were not in a condition to sell.

Q. What else happened? A. That is all.

Q. Was it left like that? A. It was.

Q. What happened after that, if anything happened in connection with that same transaction, that is, what was the next thing that happened after that call in which you informed colleague Gonzalez that apparently there was no interest on the part of the Truman people to sell? A. On Thursday, June 21, I received a call or rather I met colleague Ochoteco who asked me if it was true that I had a person who was interested, a client interested in purchasing the Truman Markets. I answered him in the affirmative, that I had had him, but I did not know if that interest persisted. [112] Colleague Ochoteco then explained to me that the reason for his question was because one of the

owners of that business was Fernando Rodriguez-Font, a son of a very good friend of his, Mr. Fernando Rodriguez, commonly known as "Paleface".

Q. Was there anything else? A. He told me that apparently these fellows, he meant the owners of the Truman Markets, Balet and Rodriguez, were in the midst of certain financial difficulties, and if anything could be done.

Q. And? A. I answered him that I could not answer because I did not know what was the attitude of the client whom I represented initially.

Q. What else happened after that? A. I told him I would get in touch with the client and I would call him about the matter.

Q. Did you tell him who your client was? A. I did not tell him.

Q. And you did not tell him either through whom it was? A. No. That was practically disclosing the name of the client.

Q. You did not mention the name of colleague Gonzalez? A. No, sir.

Q. Go on. A. As a result of that conference or conversation with colleague Ochoteco, I called Mr. Gonzalez and asked him if in view of the circumstances, when I told him of my interview or conversation with Mr. Ochoteco, [113] if he believed that his client was still interested. Colleague Gonzalez answered in the affirmative.

Q. Interested in what? A. In purchasing the Truman Markets.

Q. What happened after that? Colleague, I ask you more specifically, through some other person, or in any other way, did you learn something in connection with this business? A. Yes, sir. Next day, that is Friday, the 22d . . .

Q. You mean June 22, 1956? A. Yes, sir, next day, when I left my office about half past four or five o'clock in the afternoon, I met the Marshal of this Court, Vicente de

Armas, and from the conversation we had I learned that there was the possibility of an attachment of the Truman Markets.

Q. That an attachment was going to be levied on the Truman Markets? A. Yes, sir.

Q. Go on. A. I think he told me that the creditor was the Insular Chamber of Wholesalers.

Q. Mr. Armas? A. Mr. Armas. That evening there was a social gathering in the Bar Association Building and I saw Mr. Ochoteco there. I informed him, I told him what I had learned and then Mr. Ochoteco told me that we had to move fast. He insisted with me for a short time that I disclose the identity of the person whom I was representing, which I refused to do.

[114] Q. Which you what? A. Refused to do. He told me to get in touch with my client to see if it was possible to get together, either in his office, Ochoteco's, on the following Monday, at three o'clock in the afternoon.

Q. When, if at any time, did you inform colleague Gonzalez about the attachment? A. Saturday morning.

Q. Do you mean on June 23? A. Yes, sir.

Q. What did you inform him? A. I informed him what had happened. Previously I had received a call, I can not remember from whom, if from Balet, from Rodriguez or from Otero Suro, to whom Ochoteco had apparently told what I had said. Then Mr. Gonzalez agreed that we had to move fast.

Q. Why? A. Because he believed that for the purpose of the transaction it was necessary to avoid the attachment.

Q. Why? A. Because it could affect the transaction. The main object that his client had in purchasing it was to obtain a going concern. His clients intended in turn to establish a chain of supermarkets and Mr. Gonzalez stated that they were interested in having what he called a labor force and also get acquainted with the market conditions

and for that reason if was necessary to try to avoid the attachment at any rate. He told me to get in touch with the Truman people and ask them for certain information such as their [115] balance sheet, and if the premises did not belong to the corporation if there were any lease contracts. I am not sure if he mentioned the Minutes Book. He told me he would be at his home in Santa Maria all afternoon available for anything that might come up.

Q. And what did you do? A. I got in touch with Mr. Otero-Suro; I told him what Mr. González wanted and asked him to start getting that information, to compile it and if we could get together that afternoon at any place so that I could take that information to the interested party.

Q. Up to that moment, colleague Otero-Suro did not know either who was the person interested in purchasing the business? **A. No, sir.**

Q. Was there a session that afternoon of June 23? A. Yes, sir.

Q. Where? A. The first one was at the office of the Truman Markets.

Q. About what time was it? A. About three or half past three in the afternoon, more or less.

Q. Who were present at that session at the office of the Truman Markets? A. There were the two owners, Balet and Rodriguez, the accountant, Anibal Munoz, Mr. Solomon, who was the sales manager of the market, or something like that, a position of importance; and Mr. Fishalow who I was told was the comptroller of the corporation.

[116] Q. And colleague Otero, was he there? A. He was not present; I was told he had an engagement with his family in Vega Baja.

Q. Besides those persons whom you have mentioned, were you also there? A. Yes, sir.

Q. At the meeting? A. Yes, sir.

Q. You say that there were two sessions that day? A. Yes, sir.

Q. Was there another, besides that one? A. Yes, sir.

Q. Where? A. At Mr. Gonzalez' house.

Q. Should I understand that those persons who were present at that second session are the same ones? A. And Mr. Gonzalez.

Q. In addition to colleague Gonzalez? A. Yes, sir.

Q. At what time did the second session take place? A. I would say between half past four or five o'clock in the afternoon; when I arrived at the Truman Markets at half past three, Mr. Munoz told me he did not have a balance sheet to date, but that he had a very recent one, I believe of April, the same one that was offered at the pretrial conference by IBEC and which is in their hands.

Q. That balance? A. Yes, sir.

[117] Q. Did Mr. Munoz show it to you on the afternoon of the 23d? A. Yes, sir.

Q. What else happened or was said at that meeting? A. Well, since I had no authority to do anything more, I told them I was going to get in touch with the interested persons.

Q. And you got in touch with Mr. Gonzalez that same afternoon? A. No, sir.

Q. You could not get in touch with him? A. No, sir; I could not get in touch with him and then we went personally to his house.

Q. Then at the first session I understand that he practically confined himself to showing you a balance sheet of what date? A. Not show it to me. They told me they had it. And I know they showed me some papers, but I did not examine them.

Q. And was that all? A. Yes, sir.

Q. And from there you went to the house of Mr. Gonzalez? A. Yes, sir.

Q. So that from there you turned back at half past four or five o'clock? A. Yes, sir. Before dark. At daytime.

Q. What happened at that second session? A. At that session Mr. Gonzalez welcomed us in the porch of his home. We sat down and he began to discuss the possibility of closing the business.

[118] Q. Just a minute, please. Besides Mr. Gonzalez, in representation of IBEC, was there someone else present at that meeting? A. I am not sure if at the end of the meeting there was some other person, because Mr. Gonzalez, once in possession of certain information called, I am not sure, if it was Mr. Aitken.

Q. Who was that gentleman? A. I think he lived near Gonzalez, to get in touch with Mr. Fonseca.

Q. This Fonseca, who is he or was at that time? A. Fonseca, I inferred, was the head of the supermarkets or of the Supermarkets Division of IBEC in Puerto Rico.

Q. You say that colleague Gonzalez made some telephone calls? A. Yes, sir. I know he called someone and that someone was going to call someone else, but I can not recall specifically the persons.

Q. You can not recall if they actually came to the meeting? A. I am not sure. I know that Mr. Gonzalez mentioned calling Mr. Nelson Rockefeller on the telephone, who, according to him, was in the American Embassy in London, in view of the necessity and urgency to do the business. And apparently a word from that gentleman was an "Open Sesame".

Q. You say that the transaction was discussed in general terms? A. Yes, I think that Mr. Gonzalez asked for the leases [119] which they did not have with them. The business was discussed. He made the statement then that they need not fear they would take advantage of the difficult situation in which the Truman Markets were.

Q. Now that you mention the difficult situation, I ask

you was any mention made of the attachments? A. I believe so. The Truman people warned at the meeting that there was a possibility of an attachment.

Q. To Mr. Gonzalez? A. To Mr. Gonzalez.

Q. Mr. Gonzalez knew about that already? About the attachment? A. Well; he knew but they reaffirmed it.

Q. They talked about that? A. They talked about it.

Q. Who else do you recall was at that meeting? A. Mr. Gonzalez told us he had to get in touch with the IBEC people and that he needed a "clearance". That was the word he used, in order to continue the negotiations. That it was going to go through; once we were out of the University Theater that evening, Mr. Gonzalez would let me know if he had obtained the "clearance" to continue the negotiations which would take place next day.

Q. Was that at the Opera in the University? A. Yes, sir.

Q. Do you remember if on that occasion, Saturday evening the 23d, that is, at the opera, you spoke to Mr. Gonzalez? A. Yes, sir.

[120] Q. What about? A. Mr. Gonzalez told me he had obtained the "clearance" for the negotiations. To please call Mr. Fernando Rodriguez, who was the only one of the group who had a telephone in order to get together; that he expected us at his house on Sunday. At his house. I remember he said . . . He also asked me to be present at the meeting and I told him I could not go.

Q. Did he tell you how he obtained the "clearance"? A. He did not tell me. I know because I heard it when Mr. Fonseca gave his sworn statement.

Q. Because Mr. Fonseca said it? A. Yes, sir.

Q. What did Mr. Fonseca say? A. Well, his deposition is there.

Q. And you got in touch with Mr. Rodriguez? A. Yes, sir. I called him at his house, by the way, quite late at night. He was expecting the call because we had agreed

to it at the session at Gonzalez' house. We had agreed that if the "clearance" was obtained I would call Rodriguez.

Q. And you called him? A. Yes, sir.

Q. And what did you say to Mr. Rodriguez? A. That Mr. Gonzalez had obtained the clearance to continue the conversation of the purchase of the markets and that he expected him to go to his house at half past nine or ten o'clock.

Q. Who would expect him? A. Mr. Gonzalez.

[121] Q. You did not go to that meeting held on the morning of the 24th? A. No, sir.

Q. You were not present? A. No, sir.

Q. And on July 24, Sunday, did you personally take any part in connection with this matter? A. Yes, sir.

Q. What was it? A. About half past six or seven . . . it could be six or seven more or less, on Sunday, when I returned from Aibonito, where I had stayed, I passed by Mr. Gonzalez' house to see if anything had been done, and his wife told me that Gonzalez had spent almost the whole day in the supermarkets transaction and that at that moment he was at a meeting at the office of the Truman Markets in Hato Rey with the vendors.

Q. That was Sunday, June 24, in the afternoon? A. Yes, sir.

Q. About what time was that? A. Between six and seven o'clock in the afternoon.

Q. You went to the office of the Truman Markets? A. Yes, sir.

Q. When you arrived there, who were present at the meeting at the office of the Truman Markets on Sunday afternoon, June 24? A. For IBEC there were Mr. Gonzalez and Mr. Fonseca.

Q. Did you know Mr. Fonseca before that occasion? A. No, sir. On that occasion I was introduced to him

[122] by Mr. Gonzalez. I do not dare assure because I do not know them, but there were two other persons of these three: Aitken or Mr. Kennelly or Reed.

Q. On what side? A. On IBEC. In other words, there were four persons from IBEC.

Q. They were Gonzalez and Fonseca . . . ? A. Gonzalez and Fonseca definitively and the other two persons whose names I do not remember.

Q. And of the other side? A. There were Balet and Rodriguez, Mr. Otero-Suro, Mr. Fishalow, Mr. Munoz and Mr. Solomon.

Q. Tell me, what part did you take in this meeting, and tell us what happened there as you recall it. A. When I arrived, they apparently had been discussing business propositions and terms. I asked, but I am not sure if I asked Mr. Gonzalez or Mr. Otero-Suro, the question is that I learned that Mr. Gonzalez, in the name of IBEC, had made a proposition for $680,000 and that the Truman people rejected it because they wanted $725,000 or $750,000.

Q. Don't you remember the figure? A. One of the two; they had not agreed.

Q. But was that the price for the chain of the Truman Supermarkets? A. Yes, sir, it included the Truman business and apparently it included the one of Carpenter Road in which apparently IBEC was greatly interested.

Q. What else? [123] A. When I saw that situation I came near colleague Gonzalez and asked him if his client was not actually willing to go up a little and what was the final proposition they would be willing to make to see what could be done and bring the meeting to an end, because really in such a big transaction it seemed to me that the difference was not big enough to separate the parties. Colleague Gonzalez told me that his proposition of $680,000 was more than reasonable because it included, that is, it

gave them sufficient money to pay the accounts payable and common debts.

Q. To pay the [illegible] a specific rate [illegible] the whole amount. A. The whole amount. One hundred per cent.

Q. Then the price under discussion at that time, I understand, included as one of the items considered for fixing the price, the total amount of the bills to be paid by the Truman Markets? A. Well, I don't know about that, but colleague Gonzalez told me that his proposition of $680,000 was so reasonable that it covered those unsecured credits, the preferred credits and the indebtedness on the equipment, the capital invested by Balet and Rodriguez and even a little more money as the going concern value, and under those circumstances he was not willing to increase that proposition.

Q. The one for $680,000? A. Yes, sir.

Q. Go on. [124] A. Well, finally he told me, "Well, ten or twenty thousand dollars for Rockefeller is nothing, I think we can go up as high as $700,000." Then he took a pencil and on the flap of an envelope he wrote $700,000". He passed it to Mr. Fonseca and Mr. Fonseca assented with his head.

Q. And what did he do with the envelope? A. I do not remember what he did with the envelope.

Q. What else? A. Then Mr. Gonzalez told me that if that people, that is, Truman, was willing to receive $700,000, the deal could be closed.

Q. And in view of that what did you do? A. In view of that I called Otero-Suro and told him: "Get your people together" and something else. "I think the IBEC people is willing to give them $700,000. What do you think of that proposition?"

Q. That proposition or those $700,000 of Mr. Gonzalez, was it an offer to pay the selling price or was it an amount that they would accept? A. I am not sure how that hap-

pened, but I have the impression that colleague Gonzalez wanted Truman to come down to $700,000, that he was willing to accept that. I am not sure of that but I know it was something connected with the increase to $700,000.

Q. Well, what did you do? A. Well, I informed Otero-Suro about the situation and told him that Mr. Gonzalez and IBEC were willing to go up to $700,000, that I thought that if they shave down to $700,000, they would accept. Then he asked me [125] something like this: "Do you think they will accept?" And I told him: "Well, try." After that he returned to the meeting. I do not know if Mr. Gonzalez spoke of the $700,000 to Balet & Rodriguez.

Q. Did they speak of the $700,000? A. I do not know if they spoke about that and there was a general acceptance.

Q. Among other things what? A. Among other things such as an offer from Solomon and the Balet & Rodriguez people, I mean that Mr. Gonzalez said the question of the $700,000 had to wait because they could not raise the money here immediately; that they had to get the money from the United States. That they also had to wait for Mr. Provost. He said that definitively, that they had to wait until Mr. Provost arrived.

Q. That they had to wait until Mr. Provost arrived? Who was Mr. Provost? A. I think he said he was someone who handled the supermarkets activities of IBEC in the main office.

Q. And they had to wait for him, for what purpose? A. I do not know for what purpose.

Q. And they had to wait for him for what purpose if you recall? A. Well, I think Mr. Provost had to come here to sign some papers that were going to be drawn up.

Q. After that one occasion in which we mentioned the $700,000 partially acceptable to both, what happened at that meeting? [126] A. I know that after that there was a meeting in the interior part of the office of the markets

and one of the Balet group raised the question whether that inventory was going to be made item by item; that it was going to take several weeks because of the amount of goods they had, and Mr. Gonzalez stated in the presence of Mr. Fonseca, that that was not the way to do it because it was too much work; that they were going to make a spot check and I think he said that Mr. Provost had someone who from looking at a pile or storage case could tell the amount, and that ten or fifteen thousand dollars made no difference.

Q. Who said that? A. Mr. Gonzalez.

Q. At any of those sessions was anything said about your fees and for what service? A. At the private session we had with the people of Balet & Rodriguez.

Q. Wait. When you say the private session, to which one do you refer? A. I mean the session I had with Balet and this people to talk about the transaction of $700,000; and I told Fernando Rodriguez or one of them to keep in mind, when fixing the price, if they thought it convenient, that they had to pay my commission and Rodriguez said: "We know we have to pay" and he asked how much was it and I told him that the rate was 2%. And they spoke of giving me $10,000 or $15,000.

Q. Who spoke? A. Balet and Rodriguez.

[127] Q. Tell me, in connection with this transaction, either up to the time just mentioned or subsequently, was anything said at any time or agreed that IBEC would pay you anything? A. No. There was an insinuation to that effect by colleague Gonzalez. Precisely at the end of that session he asked me to go to his house that evening at nine o'clock because he was going to call Mr. Tomas Nido, of his office, to handle the papers and that he wanted to inform Nido of all the antecedents in the presence of the other IBEC people and he asked me to do him the favor of attending the meeting. In view of everything that I was

doing, he insinuated I was not wasting my time, to which I answered: "I'm surprised, Pepe, that you think because I am helping you I expect to be paid," but nothing was ever said about IBEC paying me.

Q. You went that evening to Gonzalez' house? A. No, sir.

Q. Was it that you did not want to or could not go? A. I could not go.

Q. And was that the first time the name of Mr. Nido was mentioned? A. Yes, sir. Nido's name was mentioned for the purpose of giving him all the details of how the deal had been transacted and the papers that had to be drawn up when the time came.

Q. And couldn't colleague Gonzalez do that? A. Colleague Gonzalez said he was very busy with some hearings in the Federal Labor Department.

[128] Q. Then should I understand that on Sunday the 24th you did not go to colleague Gonzalez' house? A. I did not go in the evening.

Q. And you had no other participation that day? A. Not that day.

Q. And on Monday the 25th? A. On Monday the 25th, I did.

Q. What happened? A. On Monday the 25th I think the first thing that happened in connection with the Truman deal was a call.

Q. From whom? A. From Otero-Suro.

Q. During office hours? A. Yes, sir.

Q. Proceed. A. Not to be too accurate, between ten and eleven o'clock in the morning, closer to ten than to eleven.

Q. What happened? A. Mr. Otero-Suro called me to tell me he had gone to the Chamber of Wholesalers and that apparently the attachment could be stopped if an offer of 50% of the value of the credits was made.

Q. Wait. That attachment . . . you already knew at that time and had information, not from direct knowledge or through any adequate information, what that attachment was about, to be levied by whom?- A. Well, it was an attachment of the Chamber of Wholesalers to secure a judgment in favor of the merchants who had supplied goods to Balet and Rodriguez.

[129] Q. To collect the accounts against Balet and Rodriguez?, A. Yes, sir.

Q. Credits that were in the hands of the Chamber of Wholesalers? A. Yes, sir.

Q. Was that the attachment to which you referred? A. Yes, sir.

Q. Continue and tell me what happened. A. Well, after I heard Mr. Otero-Suro I said: "Well, I can do absolutely nothing. If you wish call Mr. Gonzalez."

Q. Go on. And you said nothing to Mr. Gonzalez? A. I am not sure if I called Mr. Gonzalez to tell him what Otero-Suro had told me. Maybe I did, but I do not remember.

Q. And on any occasion, if any, you spoke to colleague Gonzalez about this matter of the attachment and the credits? A. Well, my next intervention was in answer to a call from Mr. Gonzalez.

Q. Oh! he called you? A. Yes, sir.

Q. And when was that call? Before or after Otero-Suro's? A. After.

Q. That same Monday? Or do you know if it was in the morning or in the afternoon? A. Monday morning.

Q. What was that call about? A. Mr. Gonzalez told me he was together with the Truman people.

[130] Q. He made that call from where? A. I inferred it was from his office.

Q. That he was together with the Truman people? A. Yes, sir.

Q. Go on. A. And that he was interested in getting a person who could not be identified with IBEC or Mr. Rockefeller.

Q. Identified by whom? A. By the Chamber, to go and make an offer to purchase the accounts of the Chamber at 50% of their value; by Mr. Belaval.

Q. Mr. Gonzalez said that to you? A. Yes, sir. And that he had thought that as I had some knowledge of the business I was the right person.

Q. Right for what? A. Right to make the transaction and to make the offer of purchase of the credits; that if I had any objection.

Q. Go ahead. A. I mean, Mr. Gonzalez being the person involved, I had no objection whatsoever.

Q. What do you mean "Mr. Gonzalez being the person involved" that you had no objection? A. That I was in the best attitude to serve him.

Q. Tell me one thing. Was any amount mentioned at that time? A. After I told Mr. Gonzalez I would have great pleasure in complying with his request to go to the Chamber, he told me he was going to receive a check issued in my name for $50,000.

[131] Q. What for? A. So that I would take it and deliver it to the Chamber as purchase price of the credits. He told me that steps would be taken to obtain that check; I do not know if he said with money from IBEC or something like that. I understood that it was a check originated or somehow connected with IBEC; that they were taking steps because they had to move fast because Mr. Belaval had given until two o'clock in the afternoon because he had a meeting with the members of the Chamber at four o'clock.

Q. Who was, if you know, the lawyer for the Chamber of Wholesalers? A. I think it was Mr. Rodriguez Ema or Mr. Rodriguez-Ramon.

Q. And for what purpose did Mr. Belaval grant until 2 o'clock of that afternoon? A. To take the check of $50,000 for the purchase of the credits and stay the writ of attachment.

Q. Well. How, if you know, was the amount of $50,000 fixed? A. I do not know.

Q. The first mention that you heard of $50,000 was from whose lips? A. I think from Mr. Gonzalez.

Q. When you say I think, do you mean that you have doubt if it was he or some other person? A. Well, it was Mr. Gonzalez. I do not remember Mr. Otero-Suro mentioning it to me.

[132] Q. Don't you remember whether Otero-Suro mentioned it to you? A. No, sir.

Q. Did you see Otero-Suro again that day? A. Yes, sir.

Q. When? A. Several minutes after having spoken with Gonzalez.

Q. But wasn't Otero-Suro with Gonzalez? A. But the last words Gonzalez told me were "Otero-Suro and the Balet group are immediately leaving for your office to close the deal."

Q. And they arrived at your office? A. Yes, sir. They did.

Q. When did they arrive at your office? A. Otero-Suro with Balet and Rodriguez or Salomon. Maybe I omitted one but those were the persons more or less.

Q. And that was the conversation with colleague Gonzalez? A. Yes, sir.

Q. How long afterwards? A. About ten or fifteen minutes.

Q. At what time did they reach your office? A. I would say between eleven and a quarter past eleven on Monday, June 25.

Q. That check that colleague Gonzalez mentioned to you at some time, did he tell you it was only to be shown to Mr. Belaval? A. No, sir.

[133] Q. He told you it was for what purpose? A. For the purchase of the credits.

Q. When Otero-Suro and the other gentlemen arrived at your office, as you have told us, between eleven and a quarter past eleven in the morning, what else happened there? A. I think that between the time that elapsed after they left the office of Mr. Gonzalez and reached mine, apparently there was a call from me to Mr. Gonzalez.

Q. Why do you say that apparently there was? A. Well, there was. Because after I talked to Mr. Gonzalez I kept thinking on what Mr. Gonzalez told me. Then I called him and told him that if they were going to send me the check to make that offer, for the purpose that I intervene, that is, to keep secret the name of the purchaser, and Gonzalez also told me that perhaps they would have the check ready for two o'clock in the afternoon, I told him: "Look, I can solve that problem for you; I can raise the money in the bank and then it can be reimbursed to me. Since I had been told that a check for $50,000 was coming to me I found myself protected and Mr. Gonzalez told me "all right".

Q. I understand that that conversation with Gonzalez was a second conversation between you and Gonzalez? A. Yes, but it was initiated by me.

Q. Was that before Otero-Suro called at your office? A. Yes, sir.

Q. And then Otero-Suro arrived with that people? A. Otero-Suro arrived and he simply discussed the time we were going to meet; where, the place, the premises.

[134] Q. About the check, did you and Otero-Suro say anything, if you remember? A. About the $50,000 check?

Q. Or about the $50,000. A. Perhaps we did, but I do not remember.

Q. What did you and Otero-Suro decide? A. That between two and a quarter after two in the afternoon we

would meet at the Ochoa Building and I would have the $50,000 to deliver to Mr. Belaval.

Q. Then you spoke about the check? A. Well, yes, but not in detail.

Q. Then you mentioned the amount? A. Possibly.

Q. And that you and Otero-Suro would go together to see Mr. Belaval that afternoon at two o'clock? A. Yes, sir.

Q. You say that the reason why you advanced the $50,000 instead of using and accepting the idea of Mr. Gonzalez of delivering a check issued was, what was the reason or reasons? A. There were two reasons, first, that apparently they could not have the money ready for two o'clock in the afternoon, as indicated by Mr. Gonzalez, because certain steps had to be taken, and second: that if a check of IBEC or against IBEC was issued, since it is known that a manager's check states who buys it, the purchaser would be identified.

Q. As to the check, do you know if Mr. Gonzalez told you that one of the steps was to get in touch with New York? A. He did not tell me.

[135] Q. Then what did you do after talking to Otero-Suro in your office at that time? A. I went to the bank, raised the funds, the check was issued and I put it in my pocket.

Q. Who issued the check in favor of whom? A. Banco Popular de Puerto Rico issued a manager's check in my favor.

Q. For what amount? A. For $50,000.

Q. Did you cash it? A. Yes, sir.

Q. Did you return to your office with it? A. No, sir, I went to lunch.

Q. And after that what happened? A. Afterwards at the agreed hour, I met Mr. Otero-Suro in front of the Ochoa Building.

Q. And what did you do? A. We went to the Chamber, to the office of Mr. Belaval.

Q. Go on. A. We arrived there and had to wait fifteen minutes.

Q. Tell me, what did you do with that check after you arrived there to see Mr. Belaval? A. I gave it to Mr. Belaval as deposit of 50% of the credits of his associates, because he had to make a liquidation.

Q. Did Mr. Belaval say anything to you on that occasion? A. Mr. Belaval tried by all possible means to have me tell him who my client was.

Q. And what happened? A. I refused because precisely that was why I was there.

[136] Q. You did not tell him that it was IBEC. A. No, sir.

Q. Did he ask anything else? A. No, sir.

Q. The reasons . . . ? A. Well, now I know because he testified, but Mr. Belaval told me "Since you do not want to tell me whom you represent in this transaction; who your client is; I want you at least to do me a favor: I am going to mention one person and you will tell me whether or not that person is your client." I answered: "Well, Mr. Belaval, you ask, I shall decide whether to answer or not."

Q. He wanted you to tell him? A. He was going to mention someone so I would tell him whether or not that was the purchaser.

Q. And what happened? A. Then we stepped aside and he told me "Look, we are from the same town, as a friend, as a gentleman, I want you to tell me if that money comes from Fernando Rodriguez." I saw no reason why I should refuse to answer that question. I told him: "I assure you that it is not Fernando Rodriguez."

Q. That is, that Mr. Belaval wanted to know if the purchaser was Fernando Rodriguez? A. Exactly. Because

the members had the idea that Mr. Rodriguez, who was the father of Fernando Rodriguez, was going to help him.

Q. Well, one thing, did you tell Mr. Belaval at any time that the check was to be shown to him so that he should see it? [137] A. No. I delivered it to him.

Q. Did you sign it? A. Of course. I signed it. I delivered the check to him. Then he noticed it had not been endorsed and he told me: "Indorse it." Then I endorsed it.

Q. Should I understand that Mr. Belaval was not satisfied with receiving the check but he also asked you to endorse it? A. Yes, sir. The check was issued in my name.

Q. You gave it to him duly endorsed? A. Yes, sir.

Q. After you gave Mr. Belaval the check, did anything else happen in his office? A. Well, he told me he would submit the proposition to the members and if it was accepted he would let me know so I would send the balance.

Q. During all this time, what was the status of the attachment? A. It had not been levied. Precisely the transaction was to avoid the attachment and expedite the purchase of the markets.

Q. Tell me if anything else happened during that conference with Mr. Belaval or if nothing else happened and you and Otero-Suro left. A. Well, I do not remember anything else. We left.

Q. When you left Mr. Belaval's office, did you leave alone or did you go down together with Mr. Otero-Suro? A. I went down together with colleague Otero-Suro.

Q. What did both of you do? A. Well, when I was about to take the elevator, in the [138] elevator or as I left the elevator, Mr. Otero-Suro made a remark as to the Cadillacs that they were all going to buy and the trip to Europe that he was going to take with the reduction that he was obtaining in the purchase of the credits.

Q. That is, if they were purchased at the 50% that you were proposing? A. Yes, sir.

Q. Go on. A. Of course, that remark struck me because the money was from IBEC.

Q. What did you do or say then? A. I told him: "Well, but how is that?" Then he tells me: "No, no, no, that money, that reduction is for us because that transaction with Mr. Belaval was made by me this morning."

Q. What transaction? A. That Belaval should consent to sell the credits for 50%.

Q. And what did you say then? A. I told him: "Gee, Guigo, I think that is altogether unreasonable. I think IBEC should have a share in that."

Q. In the reduction? A. Yes, sir.

Q. What did Otero-Suro say? A. Otero-Suro, at the beginning, you know how we lawyers are! We say things just like that. But then he said: "Perhaps it can be divided 60 for us and 40 for IBEC". And he told me or called my attention or made some calculations which showed to me that [139] if it were divided in that proportion, which he indicated, which I can not say exactly if it was sixty, forty or seventy and eighty, but which I knew was not fifty fifty.

Q. The way he said that it should be divided? A. Yes, sir. In that way, if the reduction were given to IBEC, we would always reach the conditional proposition that Mr. Gonzalez had made the preceding day, of $680,000.

Q. If it received that rate of reduction? A. Yes, sir.

Q. Was that remark made by Otero-Suro while going down in the elevator? A. While going down and as we passed the office of Fernando Badrena near the Cable Office. And I told him: "Well, look we better put this thing straight. Let us go to the office of colleague Gonzalez and see how we make all this clear because I left the office of Mr. Belaval with the impression that he was going to accept our proposition because he had talked to Mr. Gus

Lallande and Mr. Hallester who had already given their consent."

Q. Well. What happened then after that conversation between you two, how was the matter settled? A. We did not leave it pending, but Otero-Suro and I went to where I knew Mr. Gonzalez was in order to settle the problem.

Q. What problem? A. In case a reduction was obtained.

Q. Between whom? [140] A. Between IBEC and Balet and Rodriguez.

Q. Well. Where did you find Mr. Gonzalez? A. At the hearings on minimum wages, in the New York Department Store Building, in San Juan.

Q. Did you and Otero-Suro reach together the office of the New York Department Store? A. We did not arrive together. I arrived alone.

Q. What happened? A. When we were crossing or about to cross I can not say which, but I do know it was when we were coming from Ochoa Building towards the post-office, Mr. Nido was coming in the opposite direction and he called me and asked me if I had received a call from him.

Q. Can you say more or less at what time on Monday afternoon, Monday 25, did you meet Tomas Nido, more or less? A. Half past three or four.

Q. Between half past three or four in the afternoon of that day? A. Yes, sir.

Q. Go ahead. A. Mr. Nido asked me if I had received his call and I told him no. Then he tells me: "The plans have been changed. I have a check." And then I told him "Give it to me."

Q. But did you tell him that you had made the deposit? A. Yes, sir, I told him I had just left the Chamber of Wholesalers where I had made the deposit. Then he tells me: "Because I have the check" and I told him: "Well, give it to me."

[141] Q. And what else? A. Then Mr. Nido told me:

"But it is in my name." I thought Mr. Gonzalez had received it. When I told him "Give it to me" it was because I thought Mr. Gonzalez had obtained it for me.

Q. And what did you say? A. "Give it to me."

Q. And what did he say? A. "I can not endorse it because it is made 'In Trust'."

Q. Where was that? A. My best recollection is that it was in front of the stairway on the side of the Ochoa Building. Then I told him that anyway I was going to speak to Gonzalez about a matter connected with the business.

Q. And Otero-Suro, where was he during this time? A. When Otero-Suro saw Nido coming and that we stopped to talk, he stood away because since the office of the Chamber was close to the office of Badrena, we were afraid that they would see us together and start to speculate on the identity of the purchaser.

Q. Did he stay away definitively or for an instant? A. He went away and I told him I would call him; that I was going to the office of Gonzalez.

Q. Did you come to the office of the New York Dept.? A. Yes, sir.

Q. Did both of you go up or just you alone? A. Nido and I went up.

Q. Did you speak with Gonzalez? A. I, at least, spoke to Gonzalez. Nido did not.

[142] Q. But wasn't he present with Gonzalez? A. At least he was not present when Gonzalez and I talked.

Q. Well, what did you and Gonzalez talk about? A. I arrived and called Gonzalez aside. They were at a recess and I told him: "Look, I come from Belaval's office and everything is accomplished." Then he told me: "Well, all right." Then I told him "Now, what I want is to discuss with you the question of how it is going to be divided." I explained to him my conversation with Otero-Sura, etc.

Mr. Gonzalez then told me "Well, it seems reasonable to me to split it." He meant to split it fifty fifty.

Q. The deduction? A. The deduction.

Q. Between whom? A. Between IBEC and Balet & Rodriguez.

Q. Did Mr. Gonzalez at that time, as you recall, did Mr. Gonzalez say anything more? A. Maybe he said something else, but I do not remember.

Q. Tell me, what did you tell colleague Gonzalez that you had already accomplished?

Mr. Cordova-Diaz: I object to the question. The witness already said exactly what he told Gonzalez and it is being suggested that he said something different.

Mr. Ponsa-Feliu: No. What did you tell him?

Judge: The witness said he told colleague Gonzalez that everything had been accomplished.

[143] Mr. Cordova-Diaz: I remember he said that everything is accomplished.

Judge: Exactly. That everything is accomplished.

Mr. Cordova-Diaz: Exactly and now the question is, what did you tell Gonzalez you had accomplished. It is leading.

Judge: It seems to me, if I understand it correctly, that the question is that when he said to Gonzalez "Everything is accomplished" what did he mean by "everything is accomplished." If that is the question, it is permitted.

Witness: I did not tell Mr. Gonzalez in detail what had been accomplished. I simply told him that I had gone to Belaval and done what he had asked me to do. I did not tell him "I saw Belaval and Belaval entrusted me" or anything like that.

Q. Exactly. My question is: when you told Gonzalez that it was all accomplished, what did he tell you? A. "All right."

Q. What had he asked you to do? A. Go there, deliver a check and purchase the credits at 50%.

Q. And what did he tell you? A. "All right."

Q. Do you mean then that both of you knew what you were talking about? A. At least I knew what I was talking about.

[144] Q. At that moment, I ask you, did Mr. Gonzalez tell you something about that check that Nido had or something? A. Absolutely nothing.

Q. Did you say that Nido went up with you? A. Yes, sir.

Q. Why didn't he talk to Mr. Gonzalez? A. My impression is that he did not talk with him.

Q. You do not recall seeing Nido and Gonzalez talking there? A. Maybe they greeted each other, but as to speak, have a conversation, I think they did not.

Q. Well, asking you more specifically, while you talked with colleague Gonzalez and told him what you have told us, was Nido with you also? A. No, sir, he was greeting Mr. Rafael Bermudez, but in another place.

Q. In the same floor or in another place? A. In the same floor but in the hall to the assembly room.

Q. How long did your visit last that afternoon? A. Only a few minutes. In fact my conversation with Mr. Gonzalez was interrupted by a call to the hearing.

Q. Then what did you do afterwards? A. Well, I went to my office to call Otero-Suro to tell him the position of Gonzalez with respect to the division.

Q. With whom did your come down from the building? A. I was accompanied, I think, by Mr. Nido.

Q. Aren't you sure? A. Yes, sir, I am sure I came down with him.

Q. And from there you went to your office? A. Yes, sir.

[145] Q. And you say you called Otero-Suro? A. I tried to call him. I am not sure if I got him on the telephone to explain to him what was the position of Gonzalez or

if later I went down personally to Otero-Suro's office to explain to him Gonzalez' position.

Q. As you recall, when was it that you informed Otero-Suro of Gonzalez' position as to the splitting? A. The same afternoon.

Q. When? A. I informed either by telephone . . . I am inclined to think it was by telephone because I did not go down to Otero-Suro's office.

Q. You went down? A. To Otero-Suro's office, no. Then, as I was going to Otero-Suro's office I saw the concentration of marshals in front of the Chamber.

Q. Did you speak with Otero-Suro? A. Yes, sir.

Q. What did you tell him? A. I told him that Gonzalez said that the reasonable thing to do was to split. Then Otero neither accepted nor rejected. He only said: "Well, leave it like that."

Q. To leave what? A. To split between both of them the reduction obtained in the division of the credits.

Q. That is, of the purchase in question? A. The credits amounted to one hundred odd thousand dollars. I do not know if the odds was eight, ten or twenty thousand dollars. The reduction was half. At least $50,000 were reduced.

[146] Q. Well, tell me, what happened with the proposition submitted by you in connection with which you delivered the check for $50,000 for the purchase of the credits on the basis of 50% of their value? A. It was rejected.

Q. How did you find out it was rejected? A. Mr. Belaval called me at my house.

Q. When? A. Monday evening.

Q. And he informed you that it had been rejected? A. Yes, sir.

Q. And the check for $50,000? A. He told me that if I wanted, since he lived on Taft Street and I lived in the Condado in Vila Mayo Street he could leave it at my house when passing.

Q. When passing from where? A. When passing from the Chamber to his house.

Q. Then he called you at your house from the Chamber? A. I suppose he was in the Chamber because when he said to me "when I leave here and take that way I can return it to you . . ."

Q. And what did you say? A. I told him I appreciated it very much; that if was in good hands but that there would be no one at home to receive the check; to keep it until next day and then he said he would keep it in the safe.

Q. Then you spoke. He returned the $50,000 to you? A. Yes, sir.

Q. Which you had borrowed from the Banco Popular? A. Yes, sir

[147] Q. You personally? A. Yes, sir.

Q. Did you receive that check back? A. Yes, sir.

Q. Do you remember how and when? A. I received the check next day, Tuesday, June 26, definitely I do not remember by what means, after ten o'clock in the morning.

Q. Was it returned to you Tuesday the 26th? A. Yes, sir.

Q. You say that you do not recall the means by which you received it; whether by messenger or whether Mr. Belaval brought it? A. I know it reached my hands and I kept it in the drawer of my desk. I think that by my own instructions Mr. Belaval sent it to me through the office of Otero-Suro because Belaval was very worried, because it seemed he was worried as someone who has a responsibility because of the check and he wanted to get rid of it, and I told him: "Well, if you are in such a hurry, send it to Otero-Suro and he will send it to me by messenger."

Q. Well. After you kept the check, what else do you know about the transaction? A. I had tried to get in touch with Mr. Gonzalez in the course of the morning to

tell him what I had heard, that is, that my offer had been rejected.

Q. Did you get him? A. I did not get him at his office and they did not tell me where he was. They did not want to tell me.

[148] Q. Was he at the hearings? A. He was not at the hearings because precisely I went there myself and that day there were no hearings.

Q. Go on. You say that you did not get in touch with him? A. No, sir. Then, about eleven or half past eleven, I do not wish to give an exact hour as not to be too accurate, I received a call from Mr. Belaval.

Q. About? A. He told me that at the meeting held the day before by the members and in which the offer of 50% had been rejected, he had received the impression that if we made a considerably better offer it would be accepted.

Q. Did he say anything specific? A. I told him I had no authority to offer more than 50%. Then he told me: "But, what do you think of 75%?" I told him: "75% is too much, Mr. Belaval." Then he answered more or less these words: "Let us split the difference, 62½%." I told him: "Gosh, that seems a little more reasonable, please you are in a hurry" (it was close to two o'clock) and he said: "No." I told him: "I have to call the interested party." He answered: "Yes, but I need your answer as soon as possible because I would have to submit it again to the Board of Members," or of Directors, or something, of the Chamber.

Q. And what did you do about the 62½%? A. I then pressed more my call to Mr. Gonzalez' office. I got in touch with his secretary because Mr. Gonzalez was away. I told her it was a very urgent [149] matter in which I was positively sure that Mr. Gonzalez was interested.

Q. Tell me, your interest in getting in touch with Mr. Gonzalez at that time in which you say that you told his

secretary you had to get in touch with him because it was a very urgent matter, what was it? A. Well, to inform him of the possibility that by increasing by 12½% the offer he had told me to make the preceding day, the deal of purchasing the credits could be made and then perhaps the attachment levied the day before could be discharged.

Q. Wait. I understand that you had already informed Mr. Gonzalez that the offer of 50% had been rejected? A. No, sir.

Q. Then your call was for that purpose? A. Yes. For two things. Two things entirely germane.

Q. Well, why did you have to get in touch with Mr. Gonzalez in connection with that matter? A. Because Mr. Gonzalez was handling the negotiations for IBEC in all this business.

Q. You say you told his secretary that you had to get in touch with him urgently? A. Yes, sir. Then the secretary, who knew the relations between us, told me she had orders not to tell, but being that I was the person interested she was going to tell me where he was.

Q. Did she tell you? A. Yes, sir.

[150] Q. Where did she tell you? A. At Mr. Angel Ramos' office.

Q. Did you speak with him? A. Yes, sir.

Q. By telephone? A. Yes, sir.

Q. What did you speak about? A. Well, I told him what had happened. I told him about the new position.

Q. When you say of what had happened . . . be more specific. A. Well, what had happened was that his offer had been rejected. I told him about the new position assumed by Mr. Belaval and I told told him that Mr. Belaval imposed a new condition and that was that they had to buy not only the credits that were in litigation but also other credits held by the members which had not matured yet.

Q. Wait. The credits that were object of what? A. The credits of the Chamber of Wholesalers.

Q. And which were the object of the attachment? A. Yes, sir.

Q. When did you learn that the attachment had been levied? A. Perhaps Mr. Belaval himself told me.

Q. Do you know when the attachment was levied? A. Well I know by reference.

Q. Reference of what nature? A. Well, because I have heard it here at the different hearings.

Q. Haven't you seen the papers? A. No, sir.

[151] Q. Well, that information, when did you receive it? A. Well, Mr. Otero-Suro told me that the attachment would be levied Monday evening.

Q. And then you spoke with Gonzalez and told him that there was a new proposition. Did you tell him that there had been an attachment? A. Yes, sir.

Q. What did he say? A. That one or two days of attachment did not matter.

Q. And as to the proposition of 62 ½%? A. His words were "Go ahead."

Q. Tell me something, when you and Mr. Gonzalez spoke of the proposition of 62 ½%, to what did you refer when you spoke to him? A. To the purchase of the credits of the Chamber.

Q. At the rate of 62½% of their value? A. Yes, sir.

Q. On that second occasion did Mr. Gonzalez tell you of the check of Tomas Nido? A. No, sir. I do not recall having talked about that.

Q. He said "Go ahead."? A. Yes, sir.

Q. As to the proposition of the purchase of the credits? A. Yes, sir. Of the additional credits.

Q. At 62 ½%? A. Yes, sir.

Q. Well. In view of what you told Mr. Gonzalez, what did you do? [152] A. I called Mr. Belaval and told him:

"You may submit the proposition to the members under the terms that you and I spoke."

Q. And the check? A. Oh! Then he told me: "Then send me the check."

Q. Was that your check? A. Yes, sir. At least that was the one sent.

Q. The one you had in your desk's drawer? A. Yes, sir. I could not send him the other one.

Q. Endorsed by you? A. Yes, sir. I had endorsed it the previous day.

Q. And you sent it again to Belaval? A. Yes sir.

Q. That is, that you parted with the $70,000 again, is that right? A. Yes, sir.

Q. Explain something. In the conversation you had with colleague Gonzalez before submitting that proposition of 62 ½%, did he at any time tell you they were going to use that other check that was in the name of Tomas Nido? A. He told me nothing, because I only told him about the terms that had been changed. That is, it had been increased to 62 ½% and they had to buy the additional credits which I have mentioned.

Q. And he said "go ahead"? A. Yes, sir.

Q. You say that you sent the check to Mr. Belaval? A. Yes, sir.

Q. Don't you remember how you sent it? A. I know it reached Mr. Belaval.

[153] Q. Don't you remember how it reached him? A. No, sir. Possibly by my messenger.

Q. And this second proposition, was it accepted or rejected? A. It was accepted.

Q. How did you learn that it had been accepted? A. Mr. Belaval called me and told me.

Q. When? A. Tuesday afternoon, late in the afternoon.

Q. That same Tuesday the 26th? A. Yes, sir.

Q. Then on Tuesday the 26th you learned that the proposition of 62 1/2% had been accepted? A. Yes, sir.

Q. And the attachment? A. The attachment had been levied.

Q. Was it in force? A. Yes, sir.

Q. In view of that increase in the rate on the basis of which the second proposition had been made, the increase from the original 50% to 62 1/2%, did Mr. Belaval demand any additional payment or deposit? A. When he told me that the proposition had been accepted?

Q. No. But before accepting the 62 1/2%? A. No.

Q. He only accepted . . . A. The $50,000 against the account.

Q. The same deposit as the original $50,000? A. Yes, sir.

[154] Q. Now, after the proposition was accepted, what did Belaval say? A. That he calculated that about $60,000 would be needed to close the deal of the purchase of the credits.

Q. At the rate of 62 1/2%? A. Yes, sir. And all the credits, those due as well as those about to become due, and according to the numbers he had made, it was about $60,000 more. That if there was any difference they would reimburse or we would pay.

Q. When was it that Mr. Belaval told you about the payment of the balance due on the initial payment of the $50,000? A. He spoke to me on several occasions, but the first time was when he told me about the acceptance of the offer.

Q. Then that would be on the same afternoon of the 26th? A. Yes, sir.

Q. What did you do then? A. I told him that he had to give me time to talk to my people.

Q. What did you do? A. That was very late. Then on Wednesday, that is, next day, he called me two or three

times on the same matter. I tried to get in touch with Mr. Gonzalez to pay the rest of the credits.

Q. Did you get in touch with Mr. Gonzalez? A. I got in touch with him very late on Wednesday.

[155] Q. Late on Wednesday, June 27? A. Well, I think it was the 27th.

Q. Where did you get him? A. At his office.

Q. Was there anyone else present at that conversation? A. No one. All the employees of his office had left. It was quite late—between half past five and six.

Q. And what did you talk to him about? A. I had to wait for him.

Q. What did you talk about? A. I told him what had happened and told him that Mr. Belaval was asking for the rest of the money.

Q. What did he say? A. Mr. Gonzalez told me he had not been able to attend personally to the matter of the purchase of the credits because he was busy in other things, that he could settle the matter immediately; that I call Belaval and tell him that the $60,000 would be sent later when the other deal of the purchase of the markets was closed.

Q. Did Gonzalez tell you to call Belaval and tell him that? A. Well, that I tell Belaval that.

Q. And what did you tell Mr. Gonzalez? A. I said to him: "Well, I am going to tell him, but when the offer was made I did not talk about that." Then I took the telephone and spoke to Mr. Belaval.

Q. Did you get him? A. Yes, sir.

[156] Q. And what did you say to Mr. Belaval at that time, in the presence of colleague Gonzalez? A. Well I told him that as to the additional $60,000 there was certain difficulty because the other transaction had not been closed. Then Mr. Belaval stopped me dead and told me that he had

nothing to do with that; that that had not been the offer I had made to him the preceding day and then he hung up.

Q. And then what did you tell Mr. Gonzalez? A. Then I told him what had happened with Belaval in the conversation. Then I told him: "Since there are certain difficulties and you are busy, I think it is easy for me to raise the money." Then he told me: "Raise the money and later it all will be reimbursed to you."

Q. Was that during the conversation on Wednesday afternoon? A. Yes, sir.

Q. What did you understand by that "later it all will be reimbursed to you"? A. The original $50,000 and those $60,000 I was going to raise.

Q. But who was going to reimburse them? A. To me.

Q. But who was going to reimburse them? A. Who was going to reimburse them to me, the one who had asked to pay them, IBEC.

Q. What did you do in connection with those additional $60,000? A. I went to the bank, I made a loan and sent them to the Chamber.

[157] Q. Did you get another manager's check? A. Yes, sir.

Q. In your favor? A. Yes, sir.

Q. You said . . . you endorsed it again and you said that you sent it to Mr. Belaval? A. I sent it to him; I did not take it personally.

Q. You sent it, how? A. It must have been by messenger.

Q. And then it was already $110,000? A. Yes, sir.

Q. Do you recall when you sent the additional $60,000? A. It must have been on Thursday, because my conversation with Mr. Gonzalez was very late on Wednesday and the banks were closed already. It was Thursday the 28th or probably very early Friday morning, the 29th.

Q. One of those two days? A. Yes, sir. From that conversation I gathered that Mr. Gonzalez had postponed the

reimbursement to me until the other deal (which to him was a fact) had been closed.

Q. Tell me, on Friday morning, the 29th, did you have any conference or contact with the persons connected with this business? A. Yes, sir.

Q. With whom? A. Mr. Otero-Suro together with Balet or Rodriguez, one of them, went to my office very early.

Q. What for? A. To have the attachment released.

[158] Q. And what did you do in connection with the question of releasing the attachment? A. I called Gonzalez.

Q. Didn't you release it yourself? A. I could not do it myself.

Q. Did you call Gonzalez? A. Yes, sir.

Q. What did Gonzalez tell you? A. I explained to him and then Mr. Gonzalez remarked that the markets had been closed one or two days and that in view of the conversations going on it would be better if they remained open.

Q. Were they opened? A. They were opened.

Q. Explain to the Court what mechanism was employed to open the markets; how were they opened, how was the opening effected. A. Through a call I made, following those instructions, to Mr. Vicente de Armas, marshal of this Court.

Q. And were the Supermarkets opened? A. Yes, sir.

Q. The markets were under attachment, I believe, to secure the judgment that might be entered in favor of whoever was the owner of those credits. Is that true? A. Yes, sir.

Q. Did you give instructions that they be opened then? A. After I received the instructions from the person interested.

Q. And you asked that they be opened? [159] A. Yes, sir, to get rid of the merchandise.

Q. Was it done? A. Yes, sir.

Judge: After you delivered the second check of $60,000?

A. Yes, sir. After I had delivered $110,000 which were mine I gave that order.

Mr. Ponsa-Feliu: To show the guaranty behind?

A. Of course.

Q. Tell me, was any assignment paper made at any time of the credits during the days to which we are referring? A. No, sir. Mr. Gonzalez did not talk to me about that paper and I did not ask for it either. Subsequently I tried to get that paper.

Q. Subsequently, when? A. When I realized I was going to be left on the lurch.

Q. But that was on what date? A. After July 11, 12 or 13.

Q. That was much later then? A. Yes, sir.

Q. Before going into that. What happened after the supermarkets were reopened to the public with respect to this transaction? A. Well, I was not participating in the transaction. I only called Gonzalez and I think I called Otero-Suro two or three times to ask them how was the [160] deal of the supermarkets getting along, because since Gonzalez made me understood I was going to be paid when the deal was closed, well, naturally, I was interested because time went by. During all this time when I called Gonzalez he told me to take it easy because those deals were not a matter of two or three pennies.

Q. On what date was that? A. At the end of June. At the beginning of July, I remember Mr. Gonzalez told me that that business had not been closed definitively, the purchase, because Balet and Rodriguez were represented by a certain Mr. Solomon and that it was impossible to argue with him because one minute he said one thing and another minute he would say something else, and Mr. Gonzalez asked me to talk to Balet and Rodriguez and Otero-Suro so that they would submit their proposition in writing and if his client IBEC found the proposition acceptable he

would sign the proposition and the deal would be closed and Solomon would not have to participate in anything, which I did.

Q. Before that, I ask you, did you have any information from any source of how the transaction of the purchase and sale of the supermarkets was faring? A. Yes, I have the impression it came to my knowledge that although perhaps the possibility of purchasing the three supermarkets and the assignment of the leases had been discussed, yet IBEC insisted firmly [161] that it was interested in the Metropolitan Supermarket which was called "Truman Third" and on leasing the one in Carpenter Road.

Q. From whom did you learn about this last thing, if you remember? A. Well, it could have been from Gonzalez, or Otero-Suro or both. I knew it.

Q. Did you hear of any other attachment levied on those businesses? A. I heard about it in the middle of July.

Q. In the middle of July what did you hear? A. Someone called, I could not say who, but someone from Balet & Rodriguez, to tell me that the marshal, at the request of C. O. Mason, had levied an attachment on part of the merchandise of the small markets.

Q. Who was C. O. Mason's lawyer? A. The office of Mr. Gonzalez.

Q. And who was the lawyer taking part in the attachment? A. Mr. Tomas Nido.

Q. Go on. A. I called Mr. Gonzalez to tell him. Then he tells me: "I knew nothing about that. That's Tomas' doings." Then at that moment I began to doubt a little of the continuous assurance that Mr. Gonzalez gave me by telephone each time I called, because I did not see to a certain degree that there was harmony in those transactions and then I told him that as Mason had made the attachment then probably other creditors would do the same and the

advisable thing to do was [162] to levy an attachment on the basis of the suit of the Chamber.

Q. Did you say that to Mr. Gonzalez? A. Yes, sir.

Q. And what was decided, if anything? A. He told me to do it.

Q. To do what? A. To levy the attachment.

Q. Then the supermarkets were closed? A. Yes, sir, they were closed.

Q. Do you remember on what date? A. One or two days after Mason's attachment.

Q. Then the attachment levied for the second time . . . A. Excuse me. Let me explain, because there is an incident that also explains why I insisted that the attachment be levied.

Q. Say it. A. When I learned about the Mason attachment, about evading the issue, when I was told "everything is going to come out all right, do not worry", then of course I began to worry and I sent Mr. Ponsa to talk to Mr. Gonzalez

Q. Do you recall the date more or less? A. After Mason's attachment and before the attachment in the Chamber's suit.

Q. But that must have been in the middle of July? A. It was in July 11, 12 or 13; around there, possibly before the 13th. As a result of the impression that Gonzalez gave Mr. Ponsa in the conversation they had, [163] I was convinced I had to start taking steps to protect myself in a more effective way than the mere promise and absolute confidence I had in Mr. Gonzalez.

Q. Should I take it that thereafter you undertook to do something or took some steps leading to that end? A. Yes, sir. Among other things I insisted in the attachment, which he agreed with me was an advisable step, and it was levied.

Q. Had you talked, as suggested by Gonzalez, of making certain propositions in writing? A. Yes, sir. Those prop-

ositions in writing had already been made. Then, when all this happened and I had the impression that Mr. Gonzalez was not ratifying or complying in its entirety with what he and I had talked, because he said to Your Honor that the check was merely to be shown to Mr. Belaval. This is the first I hear of that position assumed by IBEC. I decided to take steps because frankly I found myself helpless. By then the promises of Mr. Gonzalez were not sufficient.

Q. You say that you took several steps of different kinds intended to protect your interests? A. Yes, sir. Among them, I changed the system in my conversations with Mr. Gonzalez to the point that at the suggestion of Mr. Ponsa other propositions were made between us in writing.

Q. For the sale of the supermarkets or one of them? A. Yes, sir. I remember that I had the impression already or Mr. Gonzalez had given it, that the [164] reimbursement to me would be made after the business of the supermarkets.

Q. That is my question. What interest did you have in expediting the sale of the supermarkets or one of them? A. I told you. On Wednesday 27, at the session we had in the afternoon, when something was said about raising the $60,000, Mr. Gonzalez had told me that it would all be reimbursed to me, the fifty thousand and the sixty thousand dollars, when the deal of the purchase of the supermarkets would be closed and he also told me it was not closed because he had not had the time.

Q. When you asked or talked with colleague Gonzalez as to the refund to you of those $110,000 advanced by you, what steps, if any, did Mr. Gonzalez take in order that you were reimbursed? A. I do not know what steps he took.

Q. Don't you know? A. No, sir. But I have the impression . . .

Q. Did he say anything to you? A. Of course, he told me to wait several days until the whole thing was finished.

Q. Until everything was finished as to what, do you

know? A. The purchase of the supermarkets, because the purchase of the credits was only an incident to the purchase of the Truman markets.

Q. Tell me, witness, during all this time to which you have referred in your testimony, did you take any steps or make these payments or these advanced payments in order to purchase the supermarkets for yourself? [165] A. None whatsoever. I did not even see the debtors' balance sheet. The only ones who knew the balance sheet were them.

Q. I was going to ask you if you had any detailed information of the condition of those debts of the debtors? A. No, sir. The only ones who knew that were the IBEC people.

Q. Did you see those papers at any time? A. I saw them after the suit was filed.

Q. By papers I mean the accounts assigned and the documents connected therewith. A. No. I refer to the balance sheet.

Q. To the balance sheet of Balet & Rodriguez? A. Yes, sir.

Q. Did you see it before making the payments? A. No, sir. They had it before and they still have it.

Judge: By they you mean IBEC.

A. IBEC. Yes, sir.

Mr. Ponsa: And you told us you were not involved in the acquisition or purchase of these markets? A. No, sir. I was not interested in buying the Truman Markets.

Q. Finally, you have never been engaged in that? A. No, sir.

Q. At any time? A. No, sir.

[166] Mr. Ponsa-Feliu: That is all, Your Honor.

Judge: Since it is noon we shall adjourn and start in the afternoon session with the cross-examination.

I, JUAN L. MATOS-CINTRON, Court-Reporter of the Superior Court of Puerto Rico, San Juan Part, Puerto Rico,

DO HEREBY CERTIFY: That the foregoing is a transcript of the stenographic notes taken by me of the direct testimony given by witness Mr. Luis Blanco-Lugo at the hearing of the present case on April 8, 1958.

San Juan, Puerto Rico, October 27, 1958.

(s) JUAN L. MATOS-CINTRON
Court-Reporter

[Same Title]

[167] Sworn Deposition Of
MR. RENATO FONSECA

Date: May 11, 1957
Time: 10:30 A.M.
Place: Office of Mr. Alberto Pico, Plaza Building, Sixth Floor
Notary Public: Mr. Wilfrido Roberts
Present and or represented:
Deponent: Mr. Renato (Ray) Fonseca
Represented by: Mr. Jose L. Novas
Plaintiff: Mr. Luis Blanco-Lugo
Represented by: Mr. F. Ponsa-Feliu
On behalf of Mr. Jose G. Gonzalez: Mr. Jorge Luis Cordova-Diaz
Notary Public:

At the taking of the deposition of Mr. Renato (Ray) Fonseca, there appear the deponent and Mr. Jose L. Novas, on behalf of the International Basic Economy Corporation; Mr. Francisco Ponsa-Feliu, on behalf of plaintiff Luis Blanco-Lugo, and Mr. Jorge Luis Cordova-Diaz, on behalf of defendant Jose G. Gonzalez.

Although we have waited until 10:40 A.M. for someone to appear representing the office of Fiddler, Gonzalez,

Faure & Guillermard, no one having appeared, [168] we proceed with the taking of the deposition.

Mr. Fonseca, Do you swear to say the truth and nothing but the truth, of everything you know and be asked?

Mr. Renato Fonseca: Yes, sir, I do.

Sworn Statement Of
Mr. Renato (Ray) Fonseca

Examined by Mr. Francisco Ponsa-Feliu:

Q. Will you please state your name? A. Renato Fonseca.

Q. Are you also known as Ray Fonseca? A. Commonly.

Q. Mr. Fonseca, what is the position you hold at present with the International Basic Economy Corporation? A. Manager of the Supermarkets Division in Puerto Rico.

Q. On or about the months of April, May and June 1956, what position did you hold? A. The same.

Q. Now Mr. Fonseca, who has the highest position as officer of IBEC in Puerto Rico in the Supermarket Division? A. Residing in Puerto Rico, I do.

[169] Q. And on or about April, May and June 1956 and the following months, who was the highest officer of IBEC's Supermarket Division, in Puerto Rico? A. I was.

Q. During those months in 1956 I have mentioned, what other officers of IBEC were there in Puerto Rico? I am always referring to the Supermarket Division unless I indicate otherwise. A. Residing in Puerto Rico, none; but as visitors, Messrs. Provost and Taylor.

Q. There was no other? A. In the Supermarket Division, no.

Q. And Mr. Skinner? A. Skinner is my assistant.

Q. And was he at that same time? A. Yes, sir, he was also in Puerto Rico.

Q. Also of the Supermarket Division? A. Yes, sir.

Q. Then there were Skinner, Provost and Taylor? A.

Yes, sir the last two who had come visiting and they come and go.

Q. And Mr. Aiken? A. Aiken is not of the Supermarket Division.

Q. Of what Division was Aiken then? A. Aiken was the Comptroller in Puerto Rico of the IBEC corporation in New York.

[170] Q. Did he have any connection with the Supermarket Division? A. He had jurisdiction over the Supermarket Division also.

Q. None of them were, as you say, residents of Puerto Rico? A. Mr. Aiken was.

Q. And Mr. Skinner? A. He also was.

Q. Mr. Fonseca, could you tell us more or less on what date did IBEC begin to show interest in purchasing the Truman markets? A. The interest of IBEC, in my rank, began at the end of May or early in June.

Q. What do you mean with "in my rank"; what do you mean by that expression? A. In my rank means that the interest stemmed from me, from no other person, from no other officer of a higher rank.

Q. The first person representing IBEC who became interested in the purchase of the Truman markets was you? A. I was the first person who showed interest in investigating the possibility.

Q. The possibility of what? A. Of acquiring the assets of the Truman markets.

[171] Q. Let me see if I understand correctly what you mean. Do you mean that you conceived the idea? A. Yes, sir.

Q. An idea which you believed was good, to buy the Truman markets for IBEC Supermarket Division? A. I was only interested in Supermarket No. 3, that is the one in the Metropolitan Development.

Q. But if possible to purchase them all? A. No, if possible to avoid the purchase of the others.

Q. Tell me, was the purchase of all the Truman markets considered at any time? A. The proposition included the three of them because the officers of the Truman did not agree to sell No. 3 alone.

Q. And when you learned that the officers of the Truman markets did not agree to sell No. 3 alone, then you became interested in purchasing them all? A. Due to that fact, yes.

Q. Is your answer yes? A. Yes.

Q. When did you notify for the first time the persons connected with IBEC of a superior rank, your idea of purchasing the Truman markets? [172] A. Of a superior rank than mine?

Q. You said that there were officers of IBEC of a higher rank and category than yours who were not in Puerto-Rico? A. Yes.

Q. And I ask you, when did you notify those officers of your idea of purchasing the Truman markets? A. May I use my notes with dates?

Q. Of course. A. For the first time, Saturday, June 23, 1956.

Q. How long after you conceived that idea did you communicate it? A. Well, that was approximately two months.

Q. About two months previously you had conceived the idea of purchasing the Truman markets? A. Yes.

Q. But you had not communicated it to your superiors in New York? A. No.

Q. And you took no step in connection with that idea? A. The only step I took . . . I mean, there was nothing definite and for that reason I had no proposition to submit to the Board of Directors for their approval. The only steps prior to that date consisted in a call to our lawyers' [173] office, to Pepe Gonzalez.

Q. When was that call made? A. At the end of May or early in June.

Q. At that time, what did you ask Mr. Gonzalez to do? A. I asked him to investigate the possibility with the Truman markets chain, if they were on sale because I had heard that their financial situation was difficult.

Q. What was you purpose in commissioning that to Mr. Gonzalez? A. In order to find out if it was true that they were on sale so that we could make some deal.

Q. For the purchase of the markets? A. For the purchase of the assets of the markets.

Q. In connection with that possible purchase of the Truman markets, did you take part personally in any of the conferences? A. Yes.

Q. Do you remember when the first took place? A. Conference with the Truman officers?

Q. The first conference with any other person? A. Well, the first meeting was on Sunday, June 24, 1956.

Q. Was the meeting held that day at about 9:00 o'clock in the morning? A. At 10:00 in the morning.

Q. Where? A. At the house of Mr. Gonzalez.

Q. Who else was present? A. There were present Mr. Aiken, Mr. Kennelly, Mr. Skinner, Mr. Munoz, the attorney for the Truman markets, I do not know his name . . .

Q. Otero-Suro? A. Otero-Suro, Mr. Balet, Mr. Rodriguez and Mr. Salomon and another gentleman named Fishalow.

Q. Those last four, were they officers of the corporation owning the Truman markets? A. I believe they were.

Q. And was not Mr. Gonzalez present? A. He was also present.

Q. Did you have that conference at about 10:00 in the morning at the house of Mr. Gonzalez? A. Exactly.

Q. What prompted that conference? A. That conference was held as a result of a call I received from Pepe Gonzalez the preceding evening at my home, where he informed me

that the officers of the Truman markets had gone to see him that afternoon telling him that they were willing to sell the business.

Q. Should I then understand that the first contact with the officers of the Truman markets for the purchase of the markets was made by Mr. Gonzalez? [175] A. Yes, sir.

Q. He called you and that was how the conference started on June 24, 1956, at 10:00 in the morning? A. Yes.

Q. That same day, was there another conference? A. Yes, sir, there was another one at 2:30 p.m. in the office of the Truman markets.

Q. Among the persons you named, did you mention Mr. Kennelly? A. Yes.

Q. Who is this Mr. Kennelly? A. Kennelly was that time in the Accounting Department of IBEC in New York.

Q. Of IBEC in New York? A. Yes.

Q. And was he in Puerto Rico at that time? A. He was in Puerto Rico in connection with accounting matters of IBEC in New York.

Q. And if he had nothing to do with the Supermarket Division, why did he take part in the conference? A. Because Messrs. Aiken and Kennelly had a picnic that day and they had to cancel it to come to the conference.

Q. Then Kennelly did not take part in the conference? [176] A. He participated with respect to the financial aspect.

Q. That conference was held the day after the first contact you had with the officers of IBEC in New York in connection with the purchase of the Truman markets? A. Yes, sir, that is right.

Q. And on the day the conference was held the officers of the IBEC corporation knew already that steps were being taken for the purchase of the Truman markets? A. Not the officers; only Mr. Bradford knew.

Q. Who is Mr. Bradford? A. Vice-President of IBEC activities in New York.

Q. Did Mr. Bradford have anything to do with the Supermarket Division? A. Yes, sir.

Q. After that meeting at the office of the Truman markets, was there another conference on that same day, the 24th? A. With whom?

Q. With the same persons, more or less? A. There was another conference, but with different people.

Q. With whom? A. With Mr. Gonzalez.

Q. Where did that third meeting take place on [177] Sunday June 24th? A. At the house of Mr. Gonzalez.

Q. Who were present? A. Messrs. Gonzalez, Nido, Skinner, Aiken and myself.

Q. Should I understand then that on June 24 there were three meetings: at ten o'clock A.M. at the house of Mr. Gonzalez; at two thirty P.M. at the office of the Truman markets, and at nine P.M. at the house of Mr. Gonzalez again? A. Approximately at that time the last one. Yes, sir.

Q. You mentioned the fact that you knew that the Truman markets were in financial difficulties? A. I had heard rumors.

Q. But you knew from hearsay that they were having difficulties? A. Yes.

Q. And did you or did you not know that there was a possibility of a attachment of the markets? A. I knew it on Saturday June 23 during a telephone conversation I had with Mr. Gonzalez.

Q. Then on Saturday, June 23, you spoke on the telephone with Mr. Gonzalez? A. Yes.

Q. Did you call him or did he call you? A. He called me.

[178] Q. For what purpose? A. To inform me that the officers of Truman had gone to see him that afternoon.

Q. And that same afternoon, after your conversation

with Mr. Gonzalez, did you call the IBEC officers in New York? A. That is right.

Q. On June 23 he called you and told you that he had contacted the people of the Truman markets? A. He told me that they had contacted him.

Q. And that he talked to them? A. Yes, sir.

Q. And after that Mr. Gonzalez called you? A. Yes, sir, that was what he told me.

Q. Then he spoke to you on the telephone after speaking with the Truman officers? A. Yes.

Q. And after that telephone conversation with Mr. Gonzalez, did you call Bradford at New York? A. Correct.

Q. After you had already spoken to Mr. Gonzalez? A. Yes, sir.

Q. And that was on Saturday evening June 23, 1956? A. Yes, sir, in the evening.

Q. And the first meeting with the Truman people was on June 24, 1956 Sunday at ten o'clock A.M.? A. Yes, sir.

[179] Q. When did you talk with Mr. Gonzalez before June 23? You say that it was at the beginning or at the end of May 1956. Do you remember whether it was at the beginning or at the end of May 1956? A. At the end of May or at the beginning of June.

Q. Was that the first time you talked with Mr. Gonzalez? A. Yes, sir.

Q. Tell me, what specific instructions did you give Mr. Gonzalez? A. To find out the truth of the rumors about the financial situation of the Truman markets.

Q. And you heard from him no more until June 23, 1956? A. Before that I had some news. Possibly either he called me or I called him and he informed me that Truman was not interested in selling the markets and that evidently the rumors were not true.

Q. What other subsequent contact did you have with Mr.

Gonzalez prior to June 23? A. I do not remember too well. I could have called him as to some other matter that we might have had pending.

Q. Mr. Fonseca, did you know Mr. Blanco-Lugo at that time? A. No, sir.

[180] Q. Did Mr. Gonzalez at any time mention to you the name of Mr. Blanco-Lugo . . . A. No.

Q. You say 'no', before I finish the question. A. At what time?

Q. Did Mr. Gonzalez at any time mention to you the name of Mr. Blanco-Lugo prior to June 23, 1956? A. No, sir.

Q. When did he mention it for the first time? A. When Mr. Blanco-Lugo was introduced to me on June 24 Sunday approximately at 6 P.M. when he arrived at the Truman office.

Q. Are you sure that at no previous time Mr. Gonzalez mentioned Mr. Blanco-Lugo to you? A. Not before June 24.

Q. He did not mention him? A. No, sir, I did not even know the name.

Q. Mr. Fonseca, and when, as you recall, Mr. Gonzalez mentioned to you the name of Blanco-Lugo for the first time, for what purpose was it? A. He was introduced to me formally as the person through whom he had begun his contact with the officers of the Truman markets.

Q. As the person through whom Mr. Gonzalez had begun his contacts with the officers of the Truman markets? A. Correct.

[181] Q. And according to you, that was on June 24, 1956? A. Sunday June 24, 1956.

Q. When Mr. Gonzalez talked to you, when you called him or he called you—which you do not remember—Mr. Gonzalez told you that the owners of the Truman markets

were not interested in selling the markets, on that occasion, did he mention Blanco-Lugo to you? A. No, sir.

Q. Did he say to you: "Look Ray, I just called colleague Blanco-Lugo and he says this people has not shown great interest, but that Otero-Suro promised to call him and he has not called; but that he is going to take further steps to find out"? A. I had not heard the name of Blanco-Lugo until that Sunday.

Q. And Otero-Suro's? A. No.

Q. Before June 24, 1956? A. No, sir.

Q. Did you say you have heard rumors that the Truman markets were in a difficult financial condition? A. Yes.

Q. Had you heard rumors or did you find out at some time that there was an attachment pending over the properties of the Truman markets? [182] A. I found out on Saturday, June 23.

Q. At what time on Saturday, June 23, did you learn about it? A. During my telephone conversation with Mr. Gonzalez.

Q. Did Mr. Gonzalez tell you then? A. Yes.

Q. What did Mr. Gonzalez tell you? A. He told me the officers of the Truman markets had gone to see me and that they were interested in selling and that they had changed their mind principally because they had learned the Chamber of Wholesalers was getting ready to levy an attachment.

Q. That was on Saturday June 23 that Mr. Gonzalez told you that? A. Yes.

Q. Nor did he mention the name of Mr. Otero-Suro on that occasion? A. I do not remember.

Q. And Blanco-Lugo's? A. No, sir, definitely, not.

Q. He did not mention him to you? A. No.

Q. And you, Mr. Fonesca, who was the person who had in the first place conceived the idea of a possible purchase from the Truman markets, what reaction did you have

when you learned [183] of a possible attachment on the Truman markets? A. Mr. Gonzalez told me they had to stop that, in order to prevent the attachment and the bankruptcy. My reaction was to have a conference that same evening with Mr. Gonzalez and with the officers of the Truman.

Q. For what purpose? A. For the same purpose that we had the meeting the following morning, to discuss what they had; what was the value of their assets; what were their sales.

Q. But that had nothing to do with the attachment? A. No; but it had to do with the purchase.

Q. But with the attachment it had nothing to do? A. It had nothing to do.

Q. Positively it had nothing to do with it? A. Well, as to the attachment we had to see the speed with which according to them we had to act.

Q. Why? A. Because according to them, if there was an attachment. . .

Q. Who is they? A. The officers of the Truman markets; because if the attachment went through, they could do nothing.

[184] Q. I do not understand what you say about the attachment? A. Well, that if an attachment is levied on a company, it is not in a position to sell its business.

Q. You say that if a company is attached it is not in a position to sell? A. Of course, not.

Q. In other words, that the business had to be transacted before the attachment? A. That is what the officers of Truman said.

Q. And you were not of the same opinion? A. Yes.

Q. Not everybody agreed to that? A. Of course they did.

Q. Is that the reason why there was a conference; al-

though the 24th of June was Sunday, that is, in order to take care of the matter with urgency? A. Yes, sir.

Q. As to the information relative to the attachment that Mr. Gonzalez gave you, what were the facts? A. He told me that the officers of the Truman markets had informed him that they had learned the Chamber of Wholesalers was getting ready to attach them Monday or Tuesday.

Q. And hence the meeting on Sunday? A. The officers of Truman according to Mr. [185] Gonzalez pointed out that they had to act quickly in order to stop the attachment.

Q. You say that Mr. Gonzalez called you at what time? A. At about seven thirty or eight in the evening, something like that.

Q. When Mr. Gonzalez called you, was the meeting already set for the following morning? A. I do not think so.

Q. So that in your way of thinking the meeting was set after Mr. Gonzalez talked to you A. I think so.

Q. Why? A. Because in the first place, I had to be present and they did not know whether I could be present or not.

Q. So, when were you notified of the meeting to be held next day? A. I think that Mr. Gonzalez told me he was going to call the officers of the Truman markets for a meeting next day.

Q. Then when Mr. Gonzalez informed you he had approached the Truman officers the meeting was already set? A. Simply he took it for granted that they would go to his house next day.

[186] Q. And you also took it for granted? A. Yes.

Q. So that, without hearing further from Mr. Gonzalez, you went next Sunday to the house of Mr. Gonzalez? A. I do not remember whether he called to confirm it.

Q. But didn't you call the Truman officers to set the meeting? A. No, sir.

Q. And who notified Mr. Skiner? A. I did.

Q. And Mr. Aiken? A. I did.

Q. And the other IBEC officers who took part in the conference, who notified them? A. The other one was Mr. Kennelly.

Q. Who notified Mr. Kennelly? A. Mr. Aiken.

Q. At the meeting of June 24—Sunday—at 10:00 a.m., what took place? A. We spoke of general matters, and then they asked the Truman officers for a financial report because all they had was a statement of the sales.

Q. Do you remember the time when that meeting was over? A. No, I do not remember, but it was before noon. [187] Q. What else was said or done at that meeting? A. We agreed to meet at 2:30 p.m. that same day and that the Truman officers would try to prepare the financial and operation statements.

Q. And that you would also go to the office of the Truman markets? A. Yes.

Q. And that you would go at 2:30 p.m. to continue the meeting begun that morning? A. Yes.

Q. At the meeting of 2:30 p.m. at the office of the Truman markets, what happened? A. Well, they presented the statements that they had prepared, a financial and an operation statement and other information we had requested with respect to the different rentals they paid and the utility expenses, and also the lease contracts of two of them that we wanted to see.

Q. Anything else? A. Do you want the whole course of the meeting?

Q. Please. A. They showed us the case contracts and the first thing that called my attention was that the contract they had with the Fullana Brothers stipulated it could not be transferred—it was nonassignable. Then the other contract, [188] I think it could be transferred, but they did not have it. We also asked for the articles of incorporation, but they did not have them.

We went over the financial and operation statements

and we found several errors in the figures which we supposed were not correct.

Then Mr. Salomon, who assumed the role of leader of the Truman group, stated that in his opinion the business was worth 800 and odd thousand dollars. I do not remember the exact figure. We reiterated on our part that was a fantastic sum. We spoke of some general matters and withdrew to a private office in the same Truman Market to go over the financial statements more carefully. We came out with the opinion that the business was not worth more than $740,000, I mean, that it was not worth more than $640,000.

Q. Did you reach an agreement as to the value of the business? A. We reached an agreement as to what was the value of the assets of the corporation.

Q. What happened then? A. We came out and told them that . . . one moment . . . before that . . .

Q. Who were present? A. There were Messrs. Aiken, Kennelly, Skinner, Gonzalez and myself. Also Messrs. Munoz, [189] Rodriguez, Balet, Otero-Suro, Fishalow and Blanco-Lugo who arrived later, I do not remember exactly. Before initiating all these conversations, we clearly stated that we were only interested in a proposition that would cover the purchase of the assets of the company and not the corporation.

Q. Excuse me. When you say "stated clearly" who was talking about that? A. Those conversations were led by Mr. Gonzalez and myself.

Q. And who was it who said they were only interested in the purchase of the assets? A. Both Mr. Gonzalez and myself, we said that we were not interested in the purchase of the corporation, but in the purchase of the assets.

Q. Was Mr. Gonzalez present at that meeting held at the office of the Truman markets? A. Yes.

Q. And when you left, what happened? A. We insisted

on what we said before, that any proposition was subject and had to be submitted for its approval to the New York office.

Q. That is, that you mean the person or persons who were commissioned to do the business had no authority to close the deal without first submitting it to the authorities of the New [190] York corporation? A. There was no one commissioned to do the business; but we were merely trying to see what was the total value in order to submit a plan to the New York office.

Q. A plan for what? A. For their consideration.

Q. But what was the plan and for what purpose? Was it not for the purchase of the markets? A. To purchase the assets. In our corporation in order to do any business a complete plan must first be presented to the New York office to be considered by the Board of Directors.

Q. And that was what the persons acting in the name of IBEC in Puerto Rico were going to do with respect to the authorities of New York? A. Exactly.

Q. When you met again, who spoke about the $640,000 which in your opinion was the value of the business? A. Mr. Gonzalez.

Q. What did Mr. Gonzalez say? A. I do not remember the exact words.

Q. But the idea? A. The idea was that in our opinion the assets of the Truman corporation were not worth more than $640,000, including a couple of thousands more for good will.

[191] Q. But did the sum of $640,000 include the couple of thousands for good will? A. In our opinion they were included because there was a difference between the financial statement they presented and what we considered the financial statement of sale.

Q. And the one who spoke about that was Mr. Gonzalez about the $640,000? A. Yes, sir.

Q. Was Blanco-Lugo there at that time? A. I do not remember.

Q. In order to reach the conclusion that the value of the business was $640,000, did you take into consideration a number of creditors of the corporation of the Truman markets? A. Well, that had no connection because, I repeat, we were only interested in purchasing the assets.

Q. I understand that; but in order to reach the conclusion that it was worth $640,000, my question is whether you took into consideration the fact that there was a large number of creditors of the Truman markets; I mean, to determine the assets, didn't you take into consideration the liabilities? A. The net assets of a corporation is the assets less the liabilities; but we were going to buy what they call "clean assets"; in other words, [192] it was understood always that the assets purchased had to be without any lien or encumbrance; the equipment paid and the merchandise paid.

Q. Was that taken into consideration? A. Yes, sir; we were going to buy assets.

Q. I am asking you if that was taken into consideration? A. Yes, sir, the assets had to be clean.

Q. And with respect to the creditors of the Truman markets, didn't you insist specifically that the creditors had to be paid, that is, that you had to reckon with creditors before making the transaction? A. Naturally, in order to deliver assets they have to pay the creditors.

Q. And that was the position assumed by you? A. We were buying fixed assets and a fixed asset is not a fixed asset if it does not belong to the corporation.

Q. But in order to belong to the corporation, the creditors had to be paid? A. That was something for them to decide.

Q. Then you did not inform them of the fact that they had to pay the creditors before you bought? A. I do not

remember whether it was mentioned or not, but we spoke of buying clean assets.

[193] Q. Tell me, Mr. Fonseca, when that meeting finished at two thirty p.m. on June 24, 1956, at the end of the meeting, at that moment, were you still interested in purchasing the Truman markets or you were no longer interested in buying? A. We were interested in buying the assets at the price we mentioned, which was later increased from $640,000 . . . I think . . .

Q. To $700,000? A. No, to $650,000 or $670,000.

Q. Why do you think it was increased to that figure? A. Because I remember it.

Q. And did you get to tell that to the owners of the Truman markets? A. Yes, sir, they asked for a sum over $700,000 and later went down to $700,000.

Q. And you went up how much? A. To $650,000 or $670,000; at the most $670,000.

Q. At the most, was it not $680,000? A. Not that I remember; it was $670,000, but I remember there was a difference.

Q. Don't you remember when Mr. Gonzalez wrote something on the flap of an envelope? A. Yes.

Q. What did he write? A. What he wrote was asking my approval to increase my offer from the original sum that we had [194] mentioned when we left the meeting, to $650,000 or $670,000, which was the maximum.

Q. Your recollection is that it was not $680,000? A. I do not remember very well; but I do remember the sum was not the same as the minimum sum mentioned by the Truman officers.

Q. So you remember that what Mr. Gonzalez wrote in the envelope did not exceed $670,000? A. That is what I remember.

Q. Did he only write the number or some words? A. I

do not remember what he wrote on the envelope, but I know he wrote the figure.

Q. At least the figure was on the envelope? A. Yes, sir.

Q. Then you said you are sure that at no time you told Mr. Gonzalez there was a possibility of defending a sum of $700,000 as the price for the business. A. I do not remember having told him that.

Q. But you do remember it was never over $670,000? A. The offer that was mentioned in our proposition never exceeded—that I remember—$670,000.

Q. You are then sure you never told Gonzalez it would not be easy to defend $700,000 as a reasonable sum? A. No, I don't remember.

[195] Q. Don't you remember, or are you able to say no? A. I do not remember.

Q. Then it is possible that you might have actually accepted after speaking with Mr. Gonzalez to reach the sum of $700,000? A. That is not possible.

Q. Then you remember that you did not say that? A. Well, that depends on where I said it; in the presence of the Truman officers?

Q. No, aside to Mr. Gonzalez when you had the private meeting between you? A. I do not remember having said that.

Q. The question is whether at the end of the meeting you were still interested in purchasing the Truman markets? A. In purchasing the assets of the Truman markets.

Q. On that same day, the 24th, there was a third meeting? A. Yes, sir.

Q. Where? A. At the house of Mr. Gonzalez.

Q. At what time? A. About eight or nine o'clock in the evening.

Q. Who were present? A. Messrs. Nido, Gonzalez, Skinner, Aiken and myself.

Q. Was there anyone representing the Truman markets? A. No, sir.

[196] Q. What was the purpose of the meeting at the house of Mr. Gonzalez that night? A. To inform Mr. Nido of the facts that had taken place previously because he was going to take care of the case as Mr. Gonzalez had to attend some sugar hearings.

Q. But to inform Tomas Nido there was a meeting with so many persons? A. Well, since Mr. Aiken lives about 25 yards from the house of Mr. Gonzalez and Mr. Skinner lives about a block away, I was the only one who was from far away.

Q. And why did you have to be present? A. Because I was the highest officer of the Supermarket Division here.

Q. And to inform Nido of what was going on you went there? A. Yes.

Q. And you were the one who informed Nido of what had taken place that day? A. Mr. Gonzalez and myself.

Q. Was that all that happened on the evening of June 24, 1956 in the house of Mr. Gonzalez or was anything else said? A. I do not remember.

Q. See if you can remember anything else? A. Simply to inform that we had made the proposition; [197] of what it consisted; about the question of the lease contracts; that was all.

Q. Blanco-Lugo was not present? A. No.

Q. Was anyone called on the telephone during that meeting? A. No.

Q. Was a call made to Mr. Rockefeller? A. No, sir.

Q. And as you recall, nothing more was said? A. It was said I was going to call my superiors in New York.

Q. What for? A. To inform them of the progress of the deal and to keep them informed as to the point we had reached in the transaction.

Q. Are you referring to the transaction of the purchase

of the Truman markets? A. Yes, sir, that there was an impasse in the question of price.

Q. You did that? A. Yes, sir.

Q. When? A. Next Monday.

Q. With whom did you speak? A. I spoke first with Mr. Bradford and then with Mr. Provost.

[198] Q. Do you mean that you spoke to both of them? A. Yes, sir.

Q. In the same call, or in two different calls? A. In two different calls.

Q. With whom did you speak first? A. Possibly with Bradford.

Q. Where did you call Bradford? A. To New York.

Q. And Provost? A. To Kansas.

Q. Did you speak to both about the steps that had been taken up to that moment? A. Yes, sir.

Q. Prior to that instant, had anything been said to Mr. Provost about the transaction for the purchase of the markets? A. Yes, sir.

Q. When? A. Sunday.

Q. On June 24? A. Yes.

Q. At what time on Sunday the 24th did you call Mr. Provost? A. After the 10:00 a.m. meeting, but before the 2:30 p.m. meeting.

Q. And did you speak to him about the situation? A. Yes.

[199] Q. And prior to that moment, had you spoken to Provost about the situation? A. No.

Q. And with Mr. Bradford, did you speak on Sunday? A. No, sir; with Mr. Bradford I spoke on Saturday and Monday.

Q. You spoke to Bradford on Saturday, the 23d and Monday the 25th? A. Yes, sir.

Q. And with Mr. Provost you spoke Monday the 25th? A. Yes.

Q. Don't you remember whether you spoke with Bradford first or with Provost? A. I don't remember.

Q. But did you place the call in the morning? A. Yes, sir.

Q. Mr. Fonseca, what was Mr. Provost's position in IBEC? A. Mr. Provost is Manager of the Supermarket Division of IBEC.

Q. Of the "TODOS Supermarkets"? A. Manager of the Supermarket Division.

Q. But in general? A. In Latin America.

Q. Does that include Puerto Rico? A. Yes, sir.

[200] Q. And you said that Mr. Bradford was what? A. Vice-President of IBEC activities.

Q. Supermarket activities? A. Of all activities.

Q. Including the Supermarkets? A. Yes, sir.

Q. And including Puerto Rico? A. Yes.

Q. And what did they have to do with the transaction to justify your calling them several times? A. Because, as I have explained, all sorts of transactions must be presented to them and they presented them to the Board of Directors for their approval.

Q. And was your conduct with them to keep them informed of the progress of the transaction? A. In the first place it had to be approved by Mr. Provost who is my immediate superior.

Q. Did you receive instructions from Mr. Provost in that matter? A. I only spoke to him.

Q. Didn't he give you any instructions? A. No, sir.

Q. Did he tell you that you were at liberty to do the business? [201] A. He did not say I was free to do it; he told me he did not like the business.

Q. When he told you he did not like the business, didn't you ask him what was it he did not like? A. I asked him.

Q. And what did he tell you? A. Purchasing two small supermarkets in order to purchase a big one.

Q. Didn't he like that phase of the business? A. He did not like it.

Q. And did he ask you to discontinue the transaction? A. Not in those words because I insisted on his coming to Puerto Rico and told him: "I'm going to meet this people and see what they have and I'll call you later."

Q. Which meeting was that? A. The 2:30 p.m. meeting on the 24th.

Q. Then despite the fact that Mr. Provost stated at the meeting of June 24, 1956, in the afternoon, that he did not like the business, and after you had spoken to him, did you pursue the transaction to purchase all the Truman markets including the two small units? A. Yes, sir, because they insisted that they would not sell the big one only and they also [202] said that the small unit at Munoz Rivera could be sold immediately because they had had conversations with a Mr. Garcia.

Q. So that on the afternoon of June 24, 1956, and even after having spoken to Mr. Provost and the latter having stated that he did not like the business, the transaction continued for the purchase of all the markets? A. Yes, sir.

Q. Is that correct? A. Correct.

Q. And was the maximum amount of $670,000 to which you agreed for all the markets, including the two small units? A. Yes, sir.

Q. Mr. Fonseca, wasn't the attachment mentioned at all on June 24? A. Yes, it was.

Q. When? A. The only thing I remember is that I think Otero-Suro said he could . . . that he thought he could get a postponement.

Q. But in what meeting did you speak about the attachment? A. I do not remember in which of the two.

Q. At which meeting was Otero-Suro present? A. In both, in both meetings with the Truman [203] officers.

Q. That is, in the morning and in the afternoon? A. Yes.

Q. And he was present at both? A. Yes.

Q. And what did Otero-Suro say? A. That there was the possibility that he could get—I do not know the legal term for it—the postponement of the proceedings allegedly to be taken by the Chamber of Wholesalers.

Q. Tell me something, then wasn't what you spoke about the attachment an attempt to somehow postpone it until the deal could be closed with IBEC? A. As I recall it, the object was to give us more time because even though the Truman people agreed with the sum we mentioned, the deal was not going to be closed because Mr. Provost had to come, because New York was not going to consider any business until Mr. Provost approved it.

Q. Then, how did the question of the attachment come into the picture; what was the problem about the attachment? A. The attachment was holding back the deal, because if the attachment was going through [204] on Monday it would hold back the transaction.

Q. So that the deal had to be transacted hastily? A. Yes, sir.

Q. And did you understand the deal had to be closed prior to the attachment? A. Yes, sir.

Q. Or that the attachment had to be stopped in order to continue with the transaction, which is the same thing? A. No, sir.

Q. Then wasn't anything said about trying to stop the attachment? A. On our part?

Q. On your part? A. Not on our part.

Q. Didn't Gonzalez tell Otero-Suro to talk to Mr. Bélaval on Monday morning with respect to that matter? A. I do not remember, but Otero-Suro mentioned something. I think he did.

Q. So that you heard Mr. Belaval's name mentioned at

that meeting? A. I may have heard it before, because I had been in business in Puerto Rico. Perhaps he mentioned him.

Q. Try to remember whether Mr. Gonzalez asked Otero-Suro to speak with Mr. Belaval with [205] respect to the attachment; see if you can remember. A. I do not remember.

Q. Who was going to levy that attachment? A. The Chamber of Wholesalers.

Q. How did you know that? A. Mr. Gonzalez told me.

Q. Was the information given you by Mr. Gonzalez that the Chamber was going to attach, why? A. Because the Truman markets were behind in their payments.

Q. Behind in the credits of the members of the Chamber? A. Yes.

Q. Do you remember the date when Mr. Provost arrived at Puerto Rico? A. Yes, sir, he arrived Tuesday the 26th in the afternoon.

Q. Was there another meeting on Monday the 25th? A. Not one in which I was present.

Q. Then do you mean that on Monday the 25th you did not go to any meeting connected with that matter? A. No.

Q. But did you get in touch with someone? A. Yes.

Q. With whom? A. Mr. Gonzalez got in touch with me. [206] Q. When? A. In the morning.

Q. What for? A. He told me that there were some Truman officers in his office—I do not know who exactly—and that it had been suggested—I do not know by whom—to take a cashier's check or a manager's check to the meeting of the Chamber of Wholesalers that was going to be held at 4:00 in the afternoon for the purpose of postponing the action they were going to take, saying that important negotiations were being carried out.

Q. What did Mr. Gonzalez tell you with respect to that check? A. That it had been suggested—I do not know

whether the suggestion came from him or from the Truman officers to take a manager's check simply to show it to the Chamber of Wholesalers as proof that serious negotiations were taking place and that they should postpone the action they were about to take.

Q. Was it on the telephone that Mr. Gonzalez called you? A. Yes, sir.

Q. And when he called you, whom did he say he had in his office? A. Truman officers.

[207] Q. And didn't he tell you that Otero-Suro was there? A. I do not know, I do not remember.

Q. But did he tell you that it had been suggested to take a manager's check to the Chamber of Wholesalers? A. Yes, sir.

Q. Did you understand what Mr. Gonzalez told you on the telephone with respect to the check? A. Yes, sir.

Q What did you understand? A. I understood he told me that the check had to be a manager's check in order not to disclose the name of the corporation interested in the business and that the check was to be shown to the members of the Chamber to make them understand that important negotiations were taking place so that they would postpone the action they were about to take.

Q. Important negotiations for what? A. To purchase the Truman markets.

Q. And what was to be done with the check? A. Merely to show it.

Q. Show it to whom? A. To the members of the Chamber of Wholesalers.

Q. And after showing it, what was to be done with the check? [208] A. Return it to us; it was only to show it and return it again.

Q. And take it back after showing it? A. Yes, sir.

Q. And give it to whom? A. The check was going to remain in the vault after having been returned to us.

Q. Who is "us"? A. IBEC.

Q. Who was going to show that check? A. I do not remember who.

Q. But was it someone from IBEC, from Truman, or from whom? A. It could not be from IBEC because our position would then be disclosed.

Q. And what was the purpose of the check? A. To show it to the members of the Chamber of Wholesalers as proof of important negotiations between a firm whose name could not be disclosed and the Truman supermarkets, so that they would postpone the attachment.

Q. So that it should not be known it was IBEC? A. That is right.

Q. But was it intended thereby to have the Chamber of Wholesalers suspend the attachment? A. To postpone the attachment.

Q. In order to expedite thereby the transaction [209] of the purchase of the Truman markets? A. That is right.

Q. One thing Mr. Fonseca, who obtained that check? A. As to the check, I told Mr. Gonzalez I agreed with the idea, but, however, that I should consult with Mr. Aiken since he was acting as comptroller and that was a financial matter and also that I was sure we would have to contact New York.

Q. Go on. A. The steps to obtain the manager's check were taken by Mr. Aiken through a telephone conversation between New York and the Chase Manhattan Bank.

Q. Who called New York? A. Mr. Aiken.

Q. And with whom did he speak? A. With Mr. Hisley and with Mr. Levy.

Q. Two persons you had not mentioned before? A. I did not mention them before.

Q. And who are those two persons? A. Mr. Hisley was then treasurer of the corporation and Mr. Levy the secretary.

Q. Then, were they officers of the corporation? A. That's right.

Q. Then, had those two gentlemen learned of the transaction prior to that moment? [210] A. I do not know.

Q. Don't you know? A. I suppose Mr. Bradford had informed them.

Q. Then, tell me, if they were not informed, did they have to be informed in order to explain to them everything about the check? A. Yes, of course.

Q. And wasn't any cablegram sent in connection with the check? A. Not that I know of; as far as I know everything was handled by telephone.

Q. But was the check obtained? A. It was obtained.

Q. Have you seen it? A. I did not see it.

Q. And don't you have it there? A. No, sir.

Q. Don't you have that check with you? A. No, sir.

Q. I believed you were supposed to bring the documentary evidence?

Mr. Novas: Do you wish to see the check?

Mr. Ponsa-Feliu: Yes, sir.

Mr. Novas: (Addressing the deponent)

Q. Don't you have it? A. The check is not in my possession and it [211] has never been.

Mr. Ponsa-Feliu:

Q. Then, who has it? A. Mr. Aiken.

Q. Do you say that Mr. Aiken has it? A. Perhaps the cancelled check.

Q. Does Mr. Aiken have the cancelled check?

Mr. Novas: If he says so . . .

Mr. Cordova-Diaz: The bank must have it, if it has been cancelled.

Mr. Fonseca: Well, since it is a manager's check.

Mr. Ponsa-Feliu:

Q. Then, Mr. Fonseca, have you never seen that check? A. No.

Q. But you know it was obtained? A. Yes.

Q. And that it served the purposes you have indicated? A. That's right.

Q. And given the use you have indicated? A. Solely and exclusively.

Q. That you do know? A. Yes, sir.

Q. And that day didn't you go to the meeting [212] after the call from Mr. Gonzalez? A. To what meeting?

Q. To the meeting Mr. Gonzalez had with some of the officers of the Truman markets when he called you on the telephone? A. I did not go.

Q. And didn't Mr. Aiken go either? A. Mr. Aiken may have gone to Mr. Gonzalez's sometime during the day.

Q. But to the meeting? A. I do not know.

Q. But didn't you go to the meeting that day? A. No, sir.

Q. And didn't you see Mr. Gonzalez that day? A. No, sir.

Q. Do you know of your own personal knowledge what became of that check? A. Later I learned . . .

Mr. Novas: If you know of your own personal knowledge.

M. Fonseca: What do you mean "of my own personal knowledge"?

Mr. Ponsa-Felin:

Q. Of your own knowledge. A. What became of the check?

Q. Yes, sir. A. Of my own knowledge I do not know because I have never seen it.

[213] Q. Did Mr. Gonzalez ever tell you what became of the check? A. No.

Q. Who told you anything about the check? A. Mr. Nido.

Q. What did Mr. Nido tell you about the check? A. Mr. Nido called me in the afternoon and told me that he had

already the check; that he had in his possession a manger's check, in trust of Tomas I. Nido.

Q. Quite late in the afternoon or rather early? A. Not very late in the afternoon but I do not remember the exact time. He also told me he was sending me a letter informing me—it was a receipt letter—and also telling me the purpose for which the check had been obtained.

Mr. Novas: That was all.

Mr. Ponsa-Feliu:

Q. At what meeting did you see Mr. Blanco-Lugo? A. Do you mean for the first time?

Q. Yes, sir. A. At the meeting held on Sunday afternoon, June 24.

Q. Was Otero-Suro there? A. Otero-Suro was there.

Q. And was Mr. Salomon there? A. Yes, sir.

[214] Q. And was Mr. Rodriguez there? A. Mr. Rodriguez was there.

Q. What was Mr. Rodriguez doing there and whom did he represent? A. In my opinion Mr. Rodriguez was a partner of the Truman markets.

Q. And Salomon? A. As I understood it, Salomon had been appointed Manager of the Truman corporation.

Q. And what was Mr. Otero-Suro doing there? A. Mr. Otero-Suro was representing the legal side for the Truman corporation.

Q. And Mr. Blanco-Lugo? A. Mr. Blanco-Lugo arrived later and was introduced to me. He sat somewhat apart from where most of the activity was going on.

Q. Whom did Mr. Blanco-Lugo represent at that meeting? A. He was introduced to me by Mr. Gonzalez as the Truman corporation.

Q. But whom did he represent? A. I do not know.

Q. But you, who were the highest officer of the corporation, see a person and don't try to find out whom he represents? A. Mr. Gonzalez told me that Blanco-Lugo had been

the person whom he had called to establish the [215] contact with the Truman corporation in order to prevent the disclosure of the name of the corporation interested in the purchase of the supermarkets.

Q. And had the contact already been made with the Truman corporation through Blanco-Lugo? A. . . . . (Witness does not answer.)

Q. And why must you think so hard about that, Mr. Fonseca? Isn't that what you just said?

Mr. Novas: He is entitled to think.

Mr. Fonseca: The first contact made which consisted in trying to find out whether the Truman corporation was for sale, was made by a person whom I later knew was Blanco-Lugo; but Mr. Gonzalez first told me he had a person who could find out without disclosing who was interested in the business.

Q. And didn't you ask earlier who the person was? A. No, sir.

Q. Proceed. A. To my own knowledge I do not know whether the second contact, that is, the visit of the Truman officers Saturday afternoon, began through Blanco-Lugo or whether it was made directly.

Q. And what did Mr. Gonzalez tell you about that? [216] A. That the Truman officers had gone to visit him.

Q. But when Blanco-Lugo was introduced to you on Sunday, what did Mr. Gonzalez tell you? A. He introduced him to me and he told me: "This is the man who began the contact with the Trumans."

Q. Did you know Mr. Blanco-Lugo was a lawyer? A. Well, maybe he said: "Attorney Blanco-Lugo".

Q. But did you know that Blanco-Lugo was a lawyer? A. No, sir.

Q. Was the business of the purchase of all of the Truman markets a transaction that according to your estimate

could involve about $670,000? A. More or less $650,000 or $670,000.

Q. And was that the status of the business in your mind, Monday, June 25, 1956, that it was a business which involved about $670,000? A. Yes, sir, about that amount.

Q. About $670,000? A. Yes.

Q. How did you arrive at that figure of $670,000? A. There was a financial statement they had of the equipment and certain items which in our opinion did not belong there.

Q. But after striking out those items, which in your opinion did not belong there? A. Yes, sir, that was the amount left?

[217] Q. And was it after making that analysis that the sum of $670,000 was arrived at? A. Yes, sir.

Q. Tell me, Mr. Provost . . . I am sorry, Mr. Fonseca, was $670,000 the acceptable price in your judgment? A. That was the maximum after adding a little to the original amount.

Q. Had you recommended that price to somebody? A. To whom?

Q. To your superiors? A. No, sir.

Q. And what did the price of $670,000 represent? A. What the business was worth, in my opinion.

Q. And had not you recommended doing the business for a sum you thought was acceptable? A. I told them what the situation was.

Q. My question is whether, in view of your opinion that it was worth $670,000 and in view of the interest IBEC had in the purchase of that business, you were not willing to recommend that it be bought for those $670,000? A. At that time the interest was limited to me and to Mr. Provost's coming here.

Q. Until when? A. I was saying what it was worth to the New York office and immediately thereafter Mr.

Provost [218] came to Puerto Rico to verify whether my opinion was sound or bad.

Q. But I am asking you as to what concerned you. Forget why Provost came to Puerto Rico either to ratify or revoke you. I am asking you whether, as far as you were concerned, the value was $670,000? A. Yes, sir, in my opinion it was $670,000.

Q. So that you would have recommended the purchase of the markets at that price? A. Yes, sir.

Q. And before that, undoubtedly your superiors were interested in the business or were they not interested? A. They were interested in expanding here, but they had to investigate.

Q. But in regard to IBEC interest, was there any doubt about some interest? A. In regard to Provost?

Q. In regard to IBEC? A. IBEC is Provost.

Q. Tell me, was IBEC interested or not in buying those markets? A. Mr. Provost was not interested; Provost was my immediate superior and was not interested.

Q. Then you can't tell us whether IBEC was interested or not in purchasing the markets? [219] A. If you are referring to my immediate superior, he was not interested.

Q. And if I refer to the IBEC corporation? A. The corporation was interested in expanding.

Q. Isn't the purchasing of the markets a way of expanding? A. Yes, sir, it is.

Q. Did Mr. Provost meet Mr. Salomon when he came to Puerto Rico? A. On that occasion when he came to Puerto Rico, yes.

Q. I am asking you whether he met Mr. Salomon on that occasion? A. Yes, he met him.

Q. Could you tell us what relations existed between Mr. Salomon and Mr. Provost and whether they were good or bad relations? A. Good or bad, in what sense?

Q. In any sense. A. Mr. Provost went out with Mr Salomon simply to visit some markets and Mr. Provost said that we were not at all interested in neither of the two small markets.

Q. Was that on June 26? A. The 27th.

Q. But he arrived the 26th? A. Yes, sir.

Q. And did he decide on the 27th that they were not interested in the small markets? [220] A. We had a meeting next day and from there they went to visit the markets.

Q. And what happened after that? A. When Provost returned he said they were not interested in the small markets.

Q. But was he interested in the big one? A. Yes, sir.

Q. Was the big one Number three? A. That is how they called it.

Q. Maybe I did not make my question clear: How were the relations between Mr. Salomon and Mr. Provost; were they good or bad? A. What do you mean?

Mr. Novas: We are going to object to that question.

Mr. Ponsa-Feliu:

Q. Mr. Fonseca, from you observation, what you saw and know or by what Mr. Provost said to you; what were the relations between Provost and Salomon? A. The relations were that Mr. Salomon went out to visit the markets with Provost.

Q. And what were their relations during that visit to the markets? A. I do not know because I was not present.

Q. So that up to now you have the impression that the relations between them were . . . ? [221] A. I cannot tell what they were.

Q. Did you say you were not present? A. No, sir.

Q. And that is why you do not know anything about it? A. No.

Q. Tell me, what kind of observations or remarks did Provost make about Salomon; did he express himself in

good or bad terms? A. Why did he have to express himself in bad terms about Salomon?

Q. Because of anything that he said of how Mr. Salomon acted; something he might have said about Mr. Salomon? A. Not that I know of.

Q. But, Mr. Fonseca, don't you know that Blanco-Lugo was asked to submit the propositions in writing precisely because Mr. Salomon was continuously changing his mind and that Mr. Provost complained about that? A. I know that some propositions were presented in writing, but I do not know who submitted them; I know that they came to me in writing through Mr. Gonzalez, but I do not know who gave them to him.

Q. What were those propositions? [222] A. They were somewhat different but basically the same.

Q. For what, for purchasing the markets? A. Yes.

Q. When was it that you abandoned the transaction as a whole for all the businesses? A. As I told you, when Mr. Provost returned from his inspection visit with Mr. Salomon.

Q. And was that after June 27 or on June 27, because the visit was made on that day? A. It was June 27.

Q. On June 27, did Mr. Provost express his view that they should not buy the two small markets? A. Exactly.

Q. Was it the same day—June 27, 1956—that you abandoned the idea of the transaction as a whole? A. Yes, sir.

Q. But in regard to Supermarket Number 3, were you still interested in buying it and continued submitting propositions? A. On that same day, the 27th, in the afternoon, Mr. Provost submitted one, which consisted of $280,000 with $100,000 inventory; subject to the revision of the inventory and the revision of all the fixed assets they showed in their financial statement. These were almost private conversations with Salomon.

[223] Q. Between Provost and Salomon? A. Yes, sir.

Q. But were you present? A. Yes, sir.

Q. Did you take part? A. No.

Q. Was Blanco-Lugo present? A. No.

Q. And was Mr. Gonzalez present? A. No, sir.

Q. How did that end? A. During the week, Salomon went down to $300,000 for Number 3 and we mentioned a proposition of $285,000 and that was the end. There was some discussion but nothing definite. Later Provost and myself went to Cuba.

Q. Tell me, in August 1956, didn't you make an offer of $252,000 for Number 3 through Mr. Gonzalez, that is, that you called Mr. Gonzalez to offer him $252,000 for Number 3 with $75,000 inventory? A. I do not remember.

Q. Try to remember whether it had to be decided promptly because Provost was leaving for Venezuela? A. No, sir, I went with Provost to Cuba.

Q. But was that in July? A. Yes, sir, in July.

[224] Q. But didn't he come back in August? A. I do not remember.

Q. There. Do you remember that a proposition was submitted to Mr. Gonzalez for him to submit for the purchase of market Number 3 for the sum of $252,000 with $75,000 inventory? A. I do not remember.

Q. And don't you remember that the Trumans then asked for $10,000 more, that is, $262,000 and when Mr. Gonzalez told you, you said that Provost had to be located in Venezuela to be notified? A. This was not Mr. Gonzalez.

Q. You mean it was not Mr. Gonzalez? A. I think Mr. Blanco-Lugo brought me a new proposition which was the last one of $225,000 with $75,000 inventory.

Q. Look and see. A. I am sorry. It was of $255,000 with $75,000 inventory.

Q. But you say it was Blanco-Lugo who brought it to you? A. He did not bring it; he told me on the telephone.

Q. And what did you tell him? A. That I had to wire Provost.

Q. Where was Provost then; wasn't he in Venezuela? A. He was in Venezuela.

[225] Q. Was that in August? A. In August 9.

Q. Tell me one thing; has IBEC established a market in any place previously occupied by the Trumans? A. You mean if we have established any market in a place previously occupied by the Trumans; no.

Q. Are you thinking of establishing it? A. Yes.

Q. And how was that business made? A. IBEC is going to rent.

Q. Which one? A. No. 3 of the Metropolitan Development.

Q. From whom are they going to rent it? A. From IBEC Realty.

Q. So that IBEC Realty bought the place where Truman was located before June 1956? A. Yes, sir.

Q. From whom did it buy? A. From Fullana Brothers.

Q. Do you remember, Mr. Fonseca, whether in August 1956, when this proposition of $255,000 for Number 3 came through Blanco-Lugo, you asked Blanco-Lugo to guarantee the transfer of the lease contract so that IBEC could remain [226] in the building? A. Yes, sir; that arose from a conversation I had with the Fullana, whom I met dining at a restaurant.

Q. What did you realize before that conversation? A. That they would transfer the lease contract to no one.

Q. Didn't they tell you why? A. They told me we had been fools because before talking to the Truman officers we should have gone to them to see whether they agreed to transfer the lease contract, which we did not do because the Truman officers assured us there would be no difficulties in that respect.

Q. Tell me [illegible] Fonseca, do yo[illegible]ow whether at the [illegible]e you spoke [illegible] Fullanas, IBEC Realty was dealing with them to buy the building where Truman Market No. 3 was located in the Metropolitan Development? A. I do not know.

Q. Don't you remember, Mr. Fonseca, whether Mr. Fullana told you why they did not consent to the transfer of the lease? A. No.

Q. Didn't he tell you that it was because IBEC Realty stipulated as a condition for the [227] purchase of the building the non-assignment of the lease contract in favor of the Truman? A. He didn't tell me, he didn't tell me that.

Q. That is all with the witness.

Mr. Roberts: Any other question from any of the parties?

Mr. Novas: Nothing.

Mr. Cordova-Diaz: I have nothing to ask.

Mr. Roberts: We have then finished with the deposition.

CERTIFICATE

I, Ramon Luis Durand, Reporting Stenographer authorized by the Superior Court of Puerto Rico, Do HEREBY CERTIFY: That the foregoing is a true and faithful copy of the stenographic notes taken by me during the deposition given by Mr. Renato (Ray) Fonseca, on May 11, 1957, before Notary Public Wilfrido Roberts, in the presence of counsel mentioned at the beginning of this transcript.

San Juan, Puerto Rico, May 18, 1957.

(s) RAMON LUIS DURAND
RAMON LUIS DURAND
Reporting Stenographer

IN THE SUPREME COURT OF PUERTO RICO

No. 41 Writ of Review

LUIS BLANCO LUCIO,
Plaintiff and Respondent,
v.
INTERNATIONAL BASIC ECONOMY CORPORATION AND JOSE G. GONZALEZ,
Defendants and petitioner the former.

ORDER.

San Juan, Puerto Rico, November 10, 1958.

The aforesaid petition for review is hereby denied.

It was so decreed by the Court as witness the signature of the Chief Justice, who together with Justices Belaval and Santana-Becerra took no part.

(s) LUIS NEGRON-FERNANDEZ,
Chief Justice.

I attest:

(s) IGNACIO RIVERA,
Secretary.

[Same Title—SUPREME COURT OF PUERTO RICO]

MOTION FOR RECONSIDERATION

[Filed in the Supreme Court of Puerto Rico: November 20, 1958.]

Now comes the Petitioner International Basic Economy Corporation and through its undersigned attorneys respectfully states and prays:

I

That on November 10, 1958, this Court entered an order summarily denying petitioner's request to review in its entirety the judgment rendered by the Superior Court of Puerto Rico, San Juan Part, on September 3, 1958; directing petitioner to pay to the plaintiff the sum of $105,997.30

plus interest from the date of the filing of the complaint, costs and an additional sum of $10,000 for attorney's fees for plaintiff-respondent because of obstinacy on the part of defendants.

II

The defendant-petitioner hereby prays for the reconsideration of the order entered by this Court on November 10 on the grounds stated in the memorandum which is attached hereto.

Respectfully submitted.

At San Juan, Puerto Rico, November 20, 1958.

HARTZELL, FERNANDEZ & NOVAS
By: (s) JOSE L. NOVAS,
For Petitioner.

Served copy by mail on
November 20, 1958 to
FRANCISCO PONSA-FELIU
Counsel for Plaintiff-Respondent
(s) JOSE L. NOVAS.

[Same Title — SUPREME COURT OF PUERTO RICO]

MEMORANDUM

To the Honorable Court:

In the last analysis the judgment of the Superior Court rests on the premise that codefendant Gonzalez was authorized by IBEC to purchase the credits against Balet & Rodriguez, Inc. in the hands of the Chamber of Wholesalers and, consequently, that he could delegate that authority to the plaintiff.

The petitioner alleges that there does not exist the least shred of evidence to support that contention. It likewise contends, as corollary to the preceding premise that the trial court committed error of law in holding that codefendant Gonzalez had power to authorize plaintiff to purchase, in the name of International Basic Economy Corporation,

the aforesaid credits. That is, the absolute absence of evidence to support that conclusion constitutes error of law, and it at least justifies this Court to exercise its discretion to issue a writ to review the judgment of the Superior Court. *Feliciano* v. *P. Celeiro, S. en C.*, 1955, 78 P.R.R. 37.

I

At this stage of the appeal taken by IBEC and for the purpose of proving our contention, we shall confine ourselves to an analysis of the transcript of the direct testimony of the plaintiff which is contained in the record. Plaintiff-respondent alleges that there was a conflict in the evidence presented to the trial court as to the power of Gonzalez to authorize the former to purchase for International Basic Economy Corporation the credits from the Chamber and relying mainly on his own testimony, he argues that it settled the conflict in his favor because it believed the evidence introduced by the plaintiff on that point. In short, he maintains that since the trial court based its decision on the weighing of the evidence, this Court should not exercise its discretion to review the judgment appealed from. In support of his contention he sent up a stenographic transcript of his direct testimony during the trial, so that, quoting literally from his Opposition, "... this Court may determine by itself whether all the facts held, as found by the Superior Court, are supported by the evidence." (N. 30, p. 100 of the Brief in Opposition.)

Respondent is wrong. For the purposes of our Motion for Reconsideration and disregarding any other evidence, oral as well as documentary, his direct testimony only shows the following facts:

1. That on or about the month of May 1956 Gonzalez told him that he had a client who was interested in purchasing a chain of supermarkets, whom he ident-

ified at that time as the Rockefellers; that his client liked the Truman markets and that Gonzalez asked him to investigate whether the owners of the Truman markets were willing to discuss a sale. (P. 6 and 7 of the Transcript of Direct Testimony of Respondent.)

2. That at first the Truman people did not show any interest to sell but later, for reasons not pertinent herein, they changed their mind and on June 23, 1956, a conference was held at the residence of Mr. Gonzalez, in which the plaintiff, codefendant Gonzalez and representatives of Truman participated. The officers of codefendant, International Basic Economy Corporation, did not take part (p. 19 of the transcript).

3. That at the meeting on June 23 the transaction was discussed in general terms and that Mr. Gonzalez *spoke* of calling Mr. Rockefeller by telephone at London and likewise *said* that he had to get in touch with the IBEC people to obtain a clearance (p. 20 of the transcript).

4. That on the evening of June 23 while Mr. Gonzalez was attending the University Theater, he told plaintiff he had obtained the "clearance" for the negotiation and a meeting was set for next day, Sunday, June 24; and that the manner of how he had obtained the "clearance" appears in the deposition of Mr. Fonseca (p. 21 of the transcript).

Comments. Up to this point Ray Fonseca, the top employee of IBEC in Puerto Rico, shows "interest in purchasing a supermarket chain" and asked his lawyer, codefendant Gonzalez, to investigate the possibility of carrying on that transaction.

The respondent insinuates that IBEC gave a so-called "clearance" to purchase the markets and that it so appears from the deposition of Mr. Fonseca, which plaintiff

presented in evidence. But Mr. Fonseca testified just the opposite. His immediate superior at that time was Mr. Provost, the person called upon to approve a deal of that nature. Fonseca had no authority therefor. Provost, who at the time was in Kansas City, when called by Fonseca to inform him of the possibility to purchase the Truman chain, refused to give him "a free hand", to use his own words, and in unequivocal terms he told Fonseca that "he did not like the business". (See pp. 31-33 of deposition of Fonseca attached to this memorandum.)

5. That on June 24 there were two sessions in which the Truman and IBEC groups, codefendant Gonzalez and, near the end, plaintiff-respondent, participated, and in the last of these two sessions an agreement was reached by virtue of which IBEC would purchase the Truman chain for $700,000, but that it was necessary ". . . to obtain the money in the United States . . ." and ". . . . to wait also for Mr. Provost . . .", who had to come to sign the papers that were going to be drawn up. (p. 22-26 of the transcript.)

Comments. In these first 26 pages of respondent's testimony there is not even the slightest showing that IBEC authorized Gonzalez to purchase the credits. Viewed in the light most favorable to the respondent, his testimony shows, at the most, that IBEC could purchase the markets for $700,000 but to use plaintiff's own words, ". . . . *definitively they had to wait for until Mr. Provost arrived.*" There was not even any mention of the purchase of credits by anyone. Up to here the testimony of Blanco-Lugo as to what took place on Sunday, June 24. Let us continue.

6. That on Monday morning, June 25, between 10 and 11 o'clock, plaintiff received a telephone call from Mr. Otero-Suro, counsel for the Truman market, who informed him that the attachment which the Chamber

of Wholesalers threatened to levy could be stopped by offering 50% of the value of the credits of Truman, which it possessed. Plaintiff answered Mr. Otero-Suro that he could do nothing and that he would talk to codefendant Gonzalez (pp. 29-30 of the transcript).

7. That the next participation that plaintiff had was in an answer to a call from Gonzalez, following the call from Mr. Otero-Suro, on Monday morning, June 25. Mr. Gonzalez told him he was together with the Truman people and that they were trying to get a person who could not be identified with IBEC or Rockefeller to make an offer to purchase the accounts of the Chamber at 50% of the price. Accepting this commission Gonzalez told plaintiff he would receive a check in his name for the sum of $50,000 to deliver it to the Chamber as the purchase price of the credits, stating further that ". . . . check will be obtained *I do not know* if he says with money from IBEC or something like that . . . I understood that it was *a check produced by or something connected with IBEC* . . ." (italics ours) and that immediately Gonzalez said that Otero-Suro and the Balet were going to plaintiff's office (pp. 30-32 of the transcript).

8. That before the Truman people arrived at plaintiff's office, he called Gonzalez on the telephone and offered to raise the funds personally, which later would be reimbursed to him, in order to keep the name of the purchaser secret, which proposition was immediately accepted by Mr. Gonzalez (pp. 33-35 of the transcript).

Comments. Up to page 35 of Blanco-Lugo's testimony there is no mention to any officer from IBEC authorizing Gonzalez to purchase the credits. There is not even a conclusive statement that the money promised by Gonzalez was from IBEC. Respondent is inaccurate, he mere-

ly *understood* that there was something connected with IBEC. Nor is there, of course any officer from IBEC authorizing Blanco-Lugo to use his own money. It was the *lawyer* from IBEC, according to plaintiff, who authorized him to use his own money to purchase the credits and it was the *lawyer* from IBEC who promised Blanco-Lugo that IBEC would reimburse him the money. But let us proceed.

9. That on Monday afternoon, June 25, plaintiff-respondent, together with Otero-Suro, went to the Chamber of Wholesalers and delivered to its Manager, Mr. Belaval, a manager's check for $50,000 issued in the name of plaintiff, as a deposit for the purchase of the credits which were in the hands of the Chamber (pp. 35-37 of the transcript).

10. That after making the offer and delivering to Mr. Belaval his check for $50,000, he left the Chamber and met Mr. Nido in front of the Federal Building; he informed the latter of the offer he had made and asked him for the check that Mr. Gonzalez had promised him that same morning, but that Nido refused to deliver it to him because it was issued "in trust". Thereafter he went to talk to Mr. Gonzalez who was attending a sugar hearing in one of the rooms of the New York Department Store Building in San Juan (pp. 37-41 of the transcript).

11. That in the room where the sugar hearing was taking place, he had a private conversation with Gonzalez and told the latter that everything was accomplished and that he wished to discuss with him how they were going "to split that", that is, the reduction be divided fifty-fifty between IBEC and Balet & Rodriguez, Inc.; that during that short conversation Mr. Gonzalez did not tell him anything about the check Nido had, and that the latter did not speak to Gonzalez on that occasion. On the afternoon of Mon-

day the 25th, he learned the Chamber rejected the offer to buy the credits at 50% of their value and that the next day, Tuesday, June 26, Mr. Belaval returned to him the check for $50,000 (pp. 41-47 of the transcript).

Comments. From page 35 to 47 respondent's testimony makes no reference to any of the officers of IBEC. In his conversation he mentions Otero-Suro, Belaval (of the Chamber), and Nálo, who informed him he had a check in his name (Nido's) that was issued "in trust", and that he could not deliver it to plaintiff and so refused. In his last conversation with Gonzalez, on Monday afternoon, June 25, there was no officer from IBEC present to authorize the purchase of the credits that the Chamber had for more than $100,000 against a corporation in the brink of bankruptcy or on which an attachment was about to be levied. Again, according to plaintiff, it was the *attorney* of IBEC who authorized the transaction.

12. That between 11:00 and 11:30 on Tuesday, June 26, Mr. Belaval called him on the telephone and told him more or less the following: "Let us split the difference, 62½%." Plaintiff answered to Mr. Belaval that he had to call other persons interested in the business and after certain difficulties he got in touch with Mr. Gonzalez at the office of Mr. Angel Ramos (El Mundo); he explained to him the situation, including the new proposition of 62½% made by Belaval; he also informed him that the attachment on the markets had been levied the previous evening, to which Gonzalez gave no importance, and as to the proposition of 62½% Gonzalez' answer was "Go ahead" (pp. 47-51 of the transcript).

13. That after his telephone conversation with Gonzalez, plaintiff called Belaval, authorized him to submit the proposition of 62½%, and again sent him

his check for $50,000. The new offer was accepted by the Chamber, there remaining a balance of approximately $60,000, and to obtain the balance he tried to get several times in touch with Gonzalez, but he was unable to do so until Wednesday afternoon, June 27. This conference was held at the office of Gonzalez and there was no other person present. When plaintiff informed Gonzalez that Belaval demanded payment, the former answered: ". . . Mr. Gonzalez told me that he had not been able to attend personally to the matter of the purchase of the credits because he was busy in other things, that he could settle the matter immediately; that I call Belaval and tell him that the $60,000 would be sent later when the other deal of the purchase of the markets was closed." Plaintiff did so, but Belaval stopped him dead and told him that he had nothing to do with that and hung up. He explained his conversation with Belaval to Gonzalez and then plaintiff told him: "Since there are certain difficulties and you (Gonzalez) are busy, I think it is easy for me to raise the money." Then he told me, "Raise the money and later it all will be reimbursed to you". (pp. 51-55 of the transcript).

14. That plaintiff made a loan of $60,000 which he delivered to Belaval, making a total of $110,000. The delivery of the $60,000 was made on Thursday, June 28, or probably early Friday morning, June 29. From the conversation with Gonzalez on Wednesday the 27th, plaintiff had the impression, according to his testimony, ". . . that Gonzalez had postponed the reimbursement to me until the other deal had been closed, which to him was a fact". (pp. 55-56 of the transcript).

Comments. On the 63 pages of plaintiff's direct testimony he testified that he had contact with the IBEC officers only

in the negotiations connected with the purchase of the markets and which terminated Sunday evening, June 24. This testimony covers up to page 28 of the transcript.

From page 28 to page 63 there is no mention, either direct or indirect, connecting any officer of IBEC and which might lead to the conclusion that IBEC in any way or manner authorized Mr. Gonzalez to purchase the credits. All of plaintiff's direct testimony, which covers the period between Monday, June 25, until July 1956, centers exclusively on his conversations with Gonzalez and other persons, but at no time with IBEC officers. It may not even be inferred from said testimony that Gonzalez, after authorizing plaintiff on Tuesday morning, June 26, as it is alleged, to purchase the credits at 62½% of their value, obtained confirmation of IBEC, for plaintiff himself testified in that connection that on Wednesday, June 27, Gonzalez told him "... that he had not been able to attend personally to the matter of the purchase of the credits because he was busy in other things ...." These are our commentaries on the direct testimony given by plaintiff.

For the purpose of this motion for reconsideration we believe that we have shown that from plaintiff's direct testimony it does not appear that IBEC in any way authorized Gonzalez to purchase the credits. It does not even show that Gonzalez was empowered and authorized by IBEC to purchase the markets. So much so that the Superior Court, in its finding of fact No. 6, states the following:

> "6. Both groups argued at length on the purchase price. To determine the price they considered, among other factors, the debt owed by Truman to the local suppliers of merchandise, the inventories, cost of equipment, and even an amount for the good will of the business. *Finally they agreed on the sum of $650,000, which Gonzalez promised to recommend*, but it was stated that in order to close the deal definitively

it was necessary to obtain the consent of the lessors in order to assign the contracts of lease of the premises occupied by the markets and to wait for Mr. Provost, who was expected early next day."

(Italics ours.)

Even when Gonzalez bound himself to recommend the purchase of the supermarkets, this transaction was never consummated. If the principal negotiation (purchase of the supermarkets) was not carried out, the transaction to which the trial court referred to as "incidental transaction" (purchase of the credits), could not have obtained legal validity with respect to IBEC. The authorization to purchase the credits which it is alleged was given by Gonzalez to plaintiff in the course of a brief telephone conversation on Tuesday morning, June 26, could, at the most, give rise to a cause of action from plaintiff against Gonzalez, but not against IBEC. If plaintiff seeks to base his cause of action against IBEC on a telephone conversation of Tuesday, June 26, as it seems he is attempting (see opposition to the issuance of the writ of review), then in such case his position is prima facie untenable. This is so because the action against IBEC would be based on a conversation between Gonzalez and Blanco-Lugo, in the absence of any officer from IBEC authorizing or ratifying such conversation. Particularly when plaintiff's direct testimony does not contain a shred of evidence supporting the contention that IBEC authorized Gonzalez to purchase the credits.

III

The facts appearing in this record for review fully justify this Court to exercise its discretion and issue the writ sought. When the petition for review was filed on October 2, 1958, petitioner could not and was not compelled to send to this Court the transcript of the oral evidence or part of it in support of the questions raised in said peti-

tion.* It could not have done so within the fatal term of thirty days granted by Rule 63.1 of the Rules of Civil Procedure to file the petition. Once this Court, in the exercise of its discretion, issues a writ to review a judgment of the Superior Court (as we respectfully believe it should do), it shall have before it all the evidence introduced in the trial court and it may then, and then only, decide the issue on the merits of the petition. For the time being and for the purposes of this motion for reconsideration, the facts appearing in the record are sufficient to establish, prima facie, the merits of the review sought and to induce the court to exercise its discretion in furtherance of justice.

Conclusion

Plaintiff, an intelligent and experienced attorney, has sent to this court a transcript of his direct testimony before the trial court and we presume he has done so because he believes it constitutes the best evidence and the most favorable statement of the entire evidence which was introduced during the trial. However, as we believed we have proved it, plaintiff's testimony contains nothing, absolutely nothing, which directly or indirectly may serve to support the fundamental premise of the judgment; that is, that IBEC authorized codefendant Gonzalez to purchase the credits. All that plaintiff's testimony shows is that by private telephone conversations with the lawyer for IBEC, he alleges to have received instructions from the latter to purchase the Truman credits. In this connection we must keep in mind that a lawyer cannot bind his client, as a matter of law, unless he acts within the scope of his professional duties. When a lawyer acts as counsel for his client in the course of a commercial transaction, the mere statements of the lawyer are not binding; they

* Petitioner tried to obtain the transcript of part of the oral evidence before filing its petition for review, but its efforts were fruitless.

cannot bind the client to a third person in the absence of an express and unequivocal order authorizing the lawyer to carry out the transaction in the name of a client. From the mere relationship between lawyer and client, the relation of principal and agent does not arise when the lawyer acts as counsel in a commercial transaction. And here lies the fundamental error of both the Superior Court and the plaintiff, in concluding the former and in assuming the latter, that the mere fact that Gonzalez was IBEC's lawyer could imply that IBEC authorized him to purchase the credits and that he could delegate said authority to plaintiff.

There is another fact of great weight which should induce this Court to exercise its discretion to issue the writ sought: the completely unfounded and clearly unwarranted conclusion of the trial court that IBEC acted with obstinacy in the defense of this case and the imposition of $10,000 for attorney's fees for plaintiff. We do not see how the trial court could have reached this conclusion when in order to sentence IBEC it had to resort to an inference, that is, that in order to carry out the negotiation of the purchase of the supermarkets (in which IBEC was interested) the purchase of the credits was justified as an incidental transaction to the principal negotiation. The fact that this conclusion is evidently erroneously by itself, we repeat, in the sense that IBEC was obstinate in the defense of this litigation, should be sufficient for this Court to exercise its discretion to review this case.

We pray that the motion for reconsideration be granted and the writ of review be issued.

[Same Title—Supreme Court of Puerto Rico]

ORDER

San Juan, Puerto Rico, December 5, 1958

The foregoing motion for reconsideration is hereby denied.

It was thus decreed by the Court as witness the signature of the Chief Justice, who together with Justices Belaval and Santana-Becerra, took no part.

(s) Luis Negron-Fernandez,
Chief Justice.

I attest:

(s) Ignacio Rivera,
Secretary.

[Same Title—Supreme Court of Puerto Rico]

NOTICE OF APPEAL

[Filed in the Supreme Court of Puerto Rico:
December 9, 1958.]

Notice is hereby given that International Basic Economy Corporation, one of the defendants above named, hereby appeals before the United States Court of Appeals for the First Circuit from the final decision entered in this action on November 10, 1958 by the Supreme Court of Puerto Rico denying the Petition filed by the appellant to review the judgment entered by the Superior Court of Puerto Rico, San Juan Part, on September 3, 1958, ordering the appellant to pay to the appellee the sum of $105,997.30, plus interest at the rate of 6% per annum from August 31, 1956 plus costs and the sum of $10,000 for attorney's fees. The said decision of the Supreme Court of Puerto Rico in effect affirmed the above mentioned judgment of the Superior Court, the validity whereof is involved in this appeal.

This appeal also includes the question of the validity of the Order entered by the United States District Court for Puerto Rico on December 4, 1956, remanding the action herein to the Superior Court of Puerto Rico, San Juan Part.

At San Juan, Puerto Rico, this 9th day of December 1958.

HARTZELL, FERNANDEZ & NOVAS
By: (s) JOSE L. NOVAS,
Attorneys for Appellant.

NOTICE OF SERVICE BY REGULAR MAIL

I, Jose L. Novas, one of the attorneys for the Appellant, CERTIFY: That on this same date I have sent by regular mail a copy of the preceding "Notice of Appeal" to Francisco Ponsa-Feliu, Esq., attorney for the Plaintiff-Appellee, to his address at Plaza Bldg., San Juan, Puerto Rico, and to Jorge Luis Cordova-Diaz, Esq., attorney for the Defendant Jose G. Gonzalez, to his address at Ochoa Bldg., San Juan, Puerto Rico.

(s) JOSE L. NOVAS

[Same Title—SUPREME COURT OF PUERTO RICO]

ORDER

San Juan, Puerto Rico, February 10, 1959.

In consideration of the motion filed by the International Basic Economy Corporation, petitioner herein, praying for a supersedeas bond in connection with its appeal to the United States Court of Appeals for the First Circuit, a supersedeas bond, in the amount of $137,000 is hereby fixed, which bond the petitioner shall post in favor of the respondent, within a period of ten days.

It was thus decreed by the Court as witness the signature of the Chief Justice, who together with Justices Belavel and Santana-Becerra, took no part.

(s) LUIS NEGRON-FERNANDEZ.
Chief Justice.

I attest:

(s) IGNACIO RIVERA.
Secretary.

[Same Title—Supreme Court of Puerto Rico]

ORDER

San Juan, Puerto Rico, March 9, 1959.

After considering the motion filed by International Basic Economy Corporation, respondent-appellant herein, dated December 9, 1958, as well as appellee's opposition to said motion, and having heard the parties on January 19, 1959, and after considering the briefs filed on the issue, the Court decides as follows:

Record of the Supreme Court of Puerto Rico:

I. The Clerk of this Court is hereby ordered, pursuant to Rule 75(g) of the Federal Rules of Civil Procedure, to include in the Record on Appeal to be sent to the United States Court of Appeals, after it is translated and certified, at the expense of IBEC, the record in the proceedings before this Court in connection with the Writ of Review No. 41 and in which it entered its order of November 10, 1958, denying the review sought. The record consists of the following documents:

1. (a) Petition for review filed by IBEC on Octotober 2, 1958.
   (b) Complaint of August 31, 1956.
   (c) Answer of September 6, 1956.
   (d) Statement of the case, Findings of Fact and Conclusions of Law of September 3, 1958.
2. (a) Opposition of the plaintiff to the issuance of the writ, dated October 27, 1958.
   (b) Motion for summary judgment and exhibits.
   (c) Order of August 19, 1957, denying motion for summary judgment.
3. Order of the Supreme Court of November 10, 1958, denying the petition for review.
4. (a) Motion for Reconsideration, Brief, and deposition of Mr. Ray Fonseca.

(b) Opposition to Motion for Reconsideration.
(c) Second Brief on Reconsideration filed by the petitioner IBEC.
(d) Second Brief on Reconsideration filed by the respondent.

5. Order of the Supreme Court of December 5, 1958, denying reconsideration.
6. Notice of Appeal, documents related to the preparation of the Record on Appeal to be filed before the U. S. Court of Appeals, and other documents related to supersedeas bond, etc.

Record of the Superior Court, San Juan Part:

II. And in the event that the United States Court of Appeals for the First Circuit, in considering the appeal taken by IBEC from our order of November 10, 1958, denying the petition for review, might decide to examine the original record of the Superior Court, San Juan Part, in this case, as well as the transcript of the evidence which was presented by the parties at the hearing thereof, none of which was submitted to the consideration of this Supreme Court in refusing to issue the writ, because appellant failed to include them with its petition for review in conformance with Rule 15.1(b) of our Rules, the Clerk of this Court is hereby ordered:

1. To request from the Clerk of the Superior Court, at the expense of IBEC, a complete record of the proceedings before the Superior Court, including a transcript of the oral and documentary evidence, pleadings, orders, resolutions, findings of fact and conclusions of law and the judgment of said Superior Court in this case.
2. To attach the aforesaid documents of the Superior Court, including the transcript of the evidence, after they have been translated and certified, at the expense of IBEC, to the Record on

Appeal to be sent in this case to the Court of Appeals for the First Circuit.

It was so ordered by the Court as witness the signature of the Chief Justice who, together with Justices Belaval and Santana-Becerra took no part.

(s) Luis Negron-Fernandez,
Chief Justice.

I attest:

(s) Ignacio Rivera,
Secretary.

United States Court of Appeals
for the First Circuit

No. 5519

International Basic Economy Corporation,
Defendant, Appellant

v.

Luis Blanco-Lugo,
Plaintiff, Appellee.

ORDER OF COURT
May 18, 1959.

Upon motion, It is ordered that the time for filing the record on appeal, and the statement on appeal under Rule 39, be, and the same hereby is, enlarged to and including July 15, 1959.

By the Court:
(s) ROGER A. STINCHFIELD,
Clerk.

A true copy:
Attest: (s) Roger A. Stinchfield,
Clerk.

[Cert. c. Clerk, S.C.P.R.; cc. Messrs. Novas and Ponsa-Feliu.]

IN THE SUPREME COURT OF PUERTO RICO

No. 41 Writ of Review.

Luis Blanco-Lugo,
Plaintiff-Appellee.
v.
International Basic Economy Corporation
and Jose G. Gonzalez,
Respondents-appellant
the former
(On appeal to the U. S. Court of Appeals for the
First Circuit.)

CLERK'S CERTIFICATE

I, Ignacio Rivera, Secretary of the Supreme Court of Puerto Rico, Do HEREBY CERTIFY:

That the foregoing is a true and faithful translation from Spanish into English of the documents comprising the Record on Appeal in the above-captioned case, the originals of which appear in the record of this case under my custody in this office.

IN TESTIMONY WHEREOF I issue these presents, after cancelling the sum of $80.30 in internal revenue stamps, in San Juan, Puerto Rico, this day of June, 1959.

(s) IGNACIO RIVERA,
IGNACIO RIVERA,
Secretary,
Supreme Court of the Puerto Rico.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

International Basic Economy Corporation,
Defendant-Appellant,
v.
Luis Blanco-Lugo
Plaintiff-Appellee.

DESIGNATION OF CONTENTS OF THE RECORD

Pursuant to the Rules of Civil Procedure, Rule 75(a), the Appellant designates the entire record certified by the Secretary of the Supreme Court of Puerto Rico as the record it desires to rely upon in its appeal. This designation does not constitute a waiver of Appellant's right to have reviewed by this Court a complete transcript of the evidence presented during the trial before the Superior Court of Puerto Rico, San Juan Section.

Respectfully submitted,
(s) JOSE L. NOVAS
(s) JOHN S. NOONAN
Attorneys for the
Defendant-Appellant

[Same Title—COURT OF APPEALS]

MOTION

Now comes the defendant-appellant by its undersigned attorneys and respectfully shows and prays:

I

On March 9, 1959 the Supreme Court of Puerto Rico entered an order holding that the Record on Appeal in the captioned case to be sent to this Court shall consist of the documents heretofore filed by the parties before the Supreme Court of Puerto Rico in connection with the proceedings for the revision of the judgment entered by the

Superior Court of Puerto Rico, San Juan Section, on September 3, 1958.

II

The Order of March 9 further provides that if this Court, in considering the appeal taken by the defendant-appellant from the Order of the Supreme Court of Puerto Rico of November 10, 1958, denying the Petition for Review, should decide to examine the complete record of the proceedings before the Superior Court of Puerto Rico, San Juan Section, in such event the Clerk of the Supreme Court will cause that record to be prepared, presumably upon receiving an order from this Court to that effect. There is attached hereto a certified copy of the order entered by the Supreme Court of Puerto Rico on March 9, 1959.

III

The defendant-appellant contends, as a matter of law, that in order to exercise its appellate jurisdiction, this Court must have before it and examine the complete record of the proceedings both before the Superior Court of San Juan and the Supreme Court of Puerto Rico, for the reasons set forth in the Memorandum of Law which accompanies this Motion.

Wherefore, the defendant-appellant respectfully moves this Court to enter an order directing the Clerk of the Supreme Court of Puerto Rico to cause to be prepared a transcript of the proceedings in this case both before the Superior Court of Puerto Rico, San Juan Section, and before the Supreme Court of Puerto Rico, and to have such record translated and filed with this Court.

At San Juan, Puerto Rico, this 29th day of April, 1959.

Hartzell, Fernandez & Novas
Herrick, Smith, Donald, Farley & Ketchum
by: (s) Jose L. Novas
Attorneys for the Defendant Appellant

SERVICE BY MAIL.

I, Jose L. Novas, one of the attorneys for the Defendant Appellant, CERTIFY: That on this same date I have sent by regular mail a copy of the preceding Motion to Francisco Ponsa Feliu, Esq. attorney for the plaintiff-appellee, to his known address: P. O. Box 2181, San Juan, Puerto Rico.

(s) JOSE L. NOVAS

JOSE L. NOVAS

[Same Title—COURT OF APPEALS]

MOTION FOR ORAL ARGUMENT

Now comes appellant, International Basic Economic Corporation, and respectfully shows and prays:

1. The decision of the questions of law involved in this appeal will affect the right of Puerto Rican litigants, granted by 28 U.S.C.A. 1293 to appeal from the final decisions of the Supreme Court of Puerto Rico, inasmuch as under the provisions of Law No. 115 approved by the Legislature of Puerto Rico on June 26, 1958 the decisions of the Superior Courts of the Commonwealth are no longer appealable as of right and generally may only be revieweed at the discretion of the Supreme Court of Puerto Rico by way of certiorari proceedings.

2. There are *other* questions of law involved in this appeal which have never been decided by the Supreme Court of Puerto Rico and which this Court will be called upon to decide in the absence of Puerto Rican decisions.

3. Appellant sincerely believes that oral argument would be of positive assistance to this Court because the attorneys would be able to expound more completely their respective contentions and the Judges would have the opportunity of questioning the attorneys concerning all the issues involved in this litigation and particularly with respect to those points as to which they may entertain any doubts after reading the arguments submitted in writing.

WHEREFORE appellant respectfully moves this Court to grant oral argument pursuant to Section 4 of Rule No. 26 of the Rules of this Court.

San Juan, P. R., this day of September, 1959.

HARTZELL, FERNANDEZ & NOVAS
By: (s) JOSE L. NOVAS
JOSE L. NOVAS
Attorneys for Defendant-Appellant

Copy served by mail to Francisco Ponsa-Feliu and Felix Ochoteco, Jr., attorneys for Plaintiff-Appellee, San Juan, P. R.
(s) JOSE L. NOVAS
JOSE L. NOVAS

[Same Title—COURT OF APPEALS]

STATEMENT OF POINTS

Pursuant to the Rules of Civil Procedure, Rule 75(d), the Appellant, International Basic Economy Corporation (herein called IBEC) states that it will rely on the following points in its appeal:

1. No evidence was presented during the trial showing that IBEC directly, or through an agent, or in any way, had authorized the Plaintiff to purchase the credits for whose price he has brought this suit.

2. In the trial of the case the Superior Court of Puerto Rico, San Juan Part, made no finding of fact that IBEC had authorized the Plaintiff to purchase these credits.

3. The Superior Court stated new and erroneous principles of law, misinterpreted Section 31 L.P.R.A. 4425, 31 L.P.R.A. 4431 and 4 L.P.R.A. 741, and was inescapably wrong, in its conclusion of law, that one Gonzalez, a lawyer for IBEC, had been authorized by IBEC to purchase the

credits and to authorize the Plaintiff to purchase the credits.

4. The Superior Court stated a new and erroneous principle of law, misinterpreted 31 L.P.R.A. 4425, 31 L.P.R.A. 4431, and 4 L.P.R.A. 741, and was inescapably wrong, in its conclusion of law, in direct contradiction of the evidence before it, that Gonzalez had authority from IBEC to authorize the Plaintiff to purchase the credits.

5. The Superior Court stated a new and erroneous principle of law, misinterpreted 31 L.P.R.A. 5106, and was inescapably wrong in its alternative conclusion of law that the Plaintiff had acted for IBEC throughout and had rendered IBEC liable under the equitable principles of 31 L.P.R.A. 5106.

6. The Superior Court showed manifest partiality in its findings of fact, in its imposition of the Plaintiff's attorney fees on IBEC, and in its holding that IBEC acted with temerity in defending the suit.

7. On the petition for review to the Supreme Court of Puerto Rico, the allegations in the petition for certiorari, as to "manifest partiality" on the part of the Superior Court, had to be accepted as true by the Supreme Court.

8. The Supreme Court of Puerto Rico abused its discretion and was inescapably wrong in denying review of a judgment of the Superior Court where the petition for review alleged that the Superior Court acted with manifest partiality.

9. On the petition for review to the Supreme Court of Puerto Rico, the allegations that there was no evidence of authorization by IBEC of the purchase of the credits and that the Superior Court had erred in its conclusions of law, had to be accepted as true by the Supreme Court.

10. The Supreme Court of Puerto Rico abused its discretion and was inescapably wrong in denying review of

a judgment of the Superior Court that the lawyer conducting negotiations for purchase of a business for his client could make the client liable for purchases of debts of the business, although he had received no authorization for such purchases from the client.

11. The Supreme Court of Puerto Rico abused its discretion and was inescapably wrong in denying review of a judgment of the Superior Court predicated on the premise that a person authorized to recommend the purchase of a business had the implied authority to commit his principal to the purchase of $105,997.30 of debts of the business.

12. The Supreme Court of Puerto Rico abused its discretion and was inescapably wrong in denying review of a judgment of the Superior Court that without explicit or implicit authorization a person who volunteered to purchase the debts of a business on the verge of bankruptcy would render liable for the purchase, under 31 L.P.R.A. 5106, the person negotiating for the purchase of the business.

13. The Supreme Court of Puerto Rico abused its discretion and was inescapably wrong in denying review of a judgment of the Superior Court on the basis of the record before it, considered in its entirety.

14. The Appellant is entitled to review by this Court on the whole record of the case including the transcript of the testimony in the trial before the Superior Court, and the refusal of this Court to order such a record to be transmitted to it by the Supreme Court of Puerto Rico is the denial of a federal right guaranteed under 28 U.S.C., Section 1293.

(s) JOSE L. NOVAS
(s) JOHN H. NOONAN
Attorneys for the Defendant-Appellant

August 3, 1959

United States Court of Appeals
For the First Circuit

No. 5519.

INTERNATIONAL BASIC ECONOMY CORPORATION,

DEFENDANT, APPELLANT,

v.

LUIS BLANCO LUGO,

PLAINTIFF, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

Jose L. Novas, *Hartzell, Fernandez & Novas* and *Herrick, Smith, Donald, Farley & Ketchum* for appellant.
Francisco Ponsa Feliu and *Felix Ochoteco, Jr.*, for appellee.

OPINION OF THE COURT
ON MOTION TO ENLARGE RECORD.

May 21, 1959.

PER CURIAM. This case is now before us upon a motion by appellant having to do with the record on appeal to be certified by the Clerk of the Supreme Court of Puerto Rico.

On August 31, 1956, Luis Blanco Lugo filed in the Superior Court of Puerto Rico, San Juan Part, a complaint alleging that the plaintiff, at the instance and on behalf of the defendants, had laid out certain sums of money in the purchase of various credits against Balet & Rodriguez, Inc., and that the defendants had refused to

reimburse the plaintiff for the sums so advanced. On September 3, 1958, the Superior Court entered judgment for the plaintiff in this proceeding.

Not every final judgment by the Superior Court is appealable as a matter of right to the Supreme Court of Puerto Rico. Law No. 115, enacted by the legislature of Puerto Rico on June 26, 1958, amended the Judiciary Act of Puerto Rico so as to provide in part as follows (4 tit. 4, §37, L.P.R.A.):

> "(a) Except as provided in clause (d) of this section, final judgments rendered by the Superior Court in civil cases involving or deciding a substantial constitutional question under the Constitution of the United States or the Constitution of Puerto Rico, and final judgments in criminal cases originated in the Superior Court, shall be appealable to the Supreme Court. . . .
>
> (b) Any other final judgment of the Superior Court may, on request of the party aggrieved, be reviewable by the Supreme Court, by way of certiorari issued at the discretion of the court. . . .
>
> (c) The Supreme Court of Puerto Rico may, in the exercise of its discretion, issue a writ of certification to bring forthwith before it and to hear and resolve any case pending on appeal or review pending before the Superior Court, if it deems that the public importance thereof justifies a deviation from the regular procedure and a direct adjudication by the Supreme Court. . . .
>
> (d) Judgments rendered by the Superior Court in appeals coming from the District Court and in proceedings for review, based on the record of the proceedings had at the administrative level, or by way of trial de novo, of the rulings, orders or resolutions of administrative organizations, may be reviewed by the

Supreme Court by way of certiorari to be issued at its discretion, and not otherwise."

We have no reason to doubt the competence of the legislature thus to regulate review in the Supreme Court of Puerto Rico of judgments of the lower insular courts. This is so, even though the Act of June 26, 1958, may have had an unintended effect upon review by the Court of Appeals for the First Circuit and by the Supreme Court of the United States of cases decided by the Superior Court of Puerto Rico. If such effect has been accomplished, it can only be by virtue of inadequate draftsmanship by the Congress in 28 U.S.C. §§1293 and 1294, under which the Court of Appeals for the First Circuit is vested only with jurisdiction to review final decisions of the Supreme Court of Puerto Rico. This jurisdictional language is to be contrasted with that of 28 U.S.C. §1257, under which the Supreme Court of the United States is given jurisdiction to review, by appeal or by certiorari, final judgments or decrees "rendered by the highest court of a State in which a decision could be had". Compare also 28 U.S.C. §1252, under which any party may appeal to the Supreme Court of the United States from an interlocutory or final judgment of any court of record in Puerto Rico holding an Act of Congress unconstitutional in any civil action.

When the Superior Court on September 3, 1958, entered its judgment against the defendants in this case, a review in the Supreme Court of Puerto Rico was sought by the discretionary route. On October 2, 1958, the corporate co-defendant filed in the Supreme Court of Puerto Rico a petition for review of the judgment of the Superior Court. Attached to the petition for review were (1) a copy of the amended complaint; (2) a copy of the answer thereto, and (3) the findings of fact and conclusions of law of the Superior Court judge. Luis Blanco Lugo, as the winning party below, filed an opposition to this petition

for review, and attached thereto a transcript of his own direct testimony in the Superior Court and the deposition of an officer of the corporate defendant. On November 10, 1958, the Supreme Court of Puerto Rico entered a simple order denying the petition for review ("no ha lugar"). A motion for reconsideration, filed with some exhibits on November 20, 1958, was denied by the Supreme Court on December 5, 1958. On December 9, 1958, a notice of appeal to this court from the judgment of the Supreme Court was filed.

The pending motion by appellant seeks to have added to the material hereinbefore enumerated, as part of the record on appeal, some documents and papers which were never before the Supreme Court of Puerto Rico. The motion is that this court enter an order "directing the Clerk of the Supreme Court of Puerto Rico to cause to be prepared a transcript of the proceedings in this case both before the Superior Court of Puerto Rico, San Juan Section, and before the Supreme Court of Puerto Rico, and to have such record translated and filed with this Court."

We think that this motion must be denied. Assuming for the moment, but not deciding, that 28 U.S.C. §§1293 and 1294 give us appellate jurisdiction to review decisions of the highest court in Puerto Rico in which a review could be had, the fact of the matter is that appellant has not sought to appeal from the judgment of the Superior Court of Puerto Rico. The only notice of appeal filed by appellant in this case, that of December 9, 1958, purports to take an appeal from the final decision of the Supreme Court of Puerto Rico dated November 10, 1958, denying the discretionary petition for review. There is no doubt that this judicial action by the Supreme Court of Puerto Rico is a "final decision", appealable to this court. See *Jimenez* v. *Jones*, 195 F.2d 159 (C.A. 1st, 1952), cert.

denied 344 U.S. 840 (1952). But since the review sought in the Supreme Court of Puerto Rico was available only in its discretion, that court's action in denying the petition could be set aside by us only upon a finding of an abuse of discretion, and of course, in passing upon whether there was such abuse of discretion, we can only look to the record of the case as it was presented to the Supreme Court of Puerto Rico.

An order will be entered denying appellant's motion looking to enlargement of the record on appeal.

United States Court of Appeals
For the First Circuit

No. 5519.

INTERNATIONAL BASIC ECONOMY CORPORATION,

DEFENDANT, APPELLANT,

v.

LUIS BLANCO LUGO,

PLAINTIFF, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

Before WOODBURY, *Chief Judge*, and HARTIGAN and ALDRICH, *Circuit Judges*.

Jose L. Novas and *Hartzell, Fernandez & Novas* on brief for appellant in opposition to motion to affirm or dismiss.

Francisco Ponsa Feliu and *Felix Ochoteco, Jr.*, on brief for appellee in support of motion to affirm or dismiss.

OPINION OF THE COURT

On Motion to Affirm or Dismiss.

November 6, 1959.

Woodbury, *Chief Judge*. This court on May 21, 1959, filed a per curiam opinion in this case on a motion by the appellant to enlarge the record on appeal. 267 F.2d 263. In that opinion we discussed the effect of the amendment of the Judiciary Act of Puerto Rico by Law No. 115 enacted by the Legislature of Puerto Rico on June 26, 1958, on our appellate jurisdiction over the Supreme Court of Puerto Rico under Title 28 U.S.C. §§ 1293 and 1294(5), and held that on appeals to this court from final decisions of the Supreme Court of Puerto Rico denying ("no ha lugar") applications to it for review of final judgments of the Superior Court of Puerto Rico "by way of certiorari issued at the discretion of the court" we would look only to the record submitted to the Supreme Court of Puerto Rico. We said at the end of our opinion:

> "But since the review sought in the Supreme Court of Puerto Rico was available only in its discretion, that court's action in denying the petition could be set aside by us only upon a finding of an abuse of discretion, and of course, in passing upon whether there was such abuse of discretion, we can only look to the record of the case as it was presented to the Supreme Court of Puerto Rico."

We therefore denied the appellant's motion for enlargement of the record on appeal.

The appellant filed its statement of points on appeal pursuant to our Rule 24(2) and its statement on appeal pursuant to our Rule 39(a). The substance of the allegations in these documents is that the Superior Court of Puerto Rico made no findings whatever on certain crucial issues of fact, that certain of the findings of fact which it did make were without support in the evidence, that

it acted throughout the trial with "manifest partiality" toward the plaintiff and that it "stated new and erroneous principles" of local law, both statutory and decisional. Wherefore it is asserted that the Supreme Court of Puerto Rico abused its discretion and was "inescapably wrong" and "patently erroneous" in refusing to review the decision of the Superior Court based on these manifest and glaring errors.

The appellee then moved under Rule 39(b) of this court to affirm or dismiss the appeal asserting that no substantial question was raised under the Constitution or laws of the United States and that the decision of the Supreme Court of Puerto Rico refusing to issue a writ of review involved an exercise of its discretion with respect to the interpretation of provisions of local law and that it was clear from the record and the statement on appeal that its decision was neither "inescapably wrong" nor "patently erroneous." *De Castro* v. *Board of Commissioners*, 322 U.S. 451 (1944), and cases cited.

It is clear that this case involves no substantial federal question. There is no doubt, however, that the value in controversy between the parties exceeds $5,000, exclusive of interest and costs. Therefore, this court has jurisdiction under the final provision of Title 28 U.S.C. § 1293. Having jurisdiction, the question before us is whether this is an appropriate case for us to exercise our power summarily to affirm under our Rule 39(b). See *Mercado* v. *Commins*, 322 U.S. 465 (1944). We believe that it is.

The only issue before us on this appeal, as we pointed out in our earlier opinion herein, is whether the Supreme Court of Puerto Rico abused its discretion in denying the appellant's application to it for review "by way of certiorari" of the decision adverse to it entered by the Superior Court. The appellant's assertion is that the Superior Court's errors of fact and law were so clear, manifest,

serious and fundamental that the Supreme Court must be said to have abused its discretion in not taking the case to correct those errors.

The appellant made no attempt to submit all the evidence in the case to the Supreme Court of Puerto Rico, although it might have done so under that court's Rule 15.1(b) quoted in the margin.* It included a few selected excerpts from the oral testimony in its petition for review, but it submitted with its petition only the basic pleadings (the complaint and answer), and the Superior Court's findings of fact and conclusions of law. On such a fragmentary record the Supreme Court of Puerto Rico was in no position to pass upon the appellant's contention that the findings were not supported by any evidence or that the findings were incomplete or that the Superior Court showed "manifest partiality" for the plaintiff. Without looking any further, the Supreme Court of Puerto Rico would be justified in rejecting for lack of supporting data the petitioner's contention that the Superior Court erred in its findings of fact or showed partiality. The winning party below and appellee herein, however, filed a partial transcript of the testimony with his opposition to the appellant's petition to the Supreme Court of Puerto Rico for review. It is worth while to note that this testimony gives no indication

* "The petitioner in a petition for review or for certiorari, of the nature specified in paragraph (a), shall comply with Rule 15(c) of these Rules, and shall serve the adverse parties with copy of the memorandum required by the said Rule, together with the petition. Within ten (10) days after such service, or within such additional term as the Court may grant, the adverse parties shall file their objections to the petition, accompanied by a memorandum of authorities not to exceed ten (10) pages, notice of which shall be served on the petitioner. The petitioner when filing the petition, or the opposing parties when filing their answer, may, within the term granted by the Court, submit a total or partial transcript of the oral evidence, or of the agreed statement of the evidence, or of the statement of the case, and copy of any documentary evidence which might have been under the consideration of the Superior Court."

of partiality and seems rather clearly to demonstrate that the Superior Court's findings of fact are supported by substantial evidence and cover the essential issues. On the record before us no abuse of discretion by the Supreme Court of Puerto Rico has been shown insofar as this aspect of the case is concerned.

Nor does the appellant show to our satisfaction that the Superior Court erred in its interpretation and application of established principles of the local statutory and decisional law of agency. Certainly should we be called upon to consider the Superior Court's rulings of local law we would not be persuaded by the showing made by the appellant that the court's errors were "clear or manifest," or that its interpretations of local law were "inescapably wrong" or "patently erroneous." See *De Castro* v. *Board of Commissioners*, supra, 454-459 and cases cited. On the contrary, the rules of law applied by the Superior Court to the facts as it found them seem to us "intelligible" and not "out of harmony with local law or practice," *id.* 459.

Under these circumstances a full hearing on briefs and with oral argument would surely be futile and only a waste of time for all concerned.

Judgment will be entered affirming the judgment of the Supreme Court of Puerto Rico.

JUDGMENT

November 6, 1959

Upon consideration of the statement on appeal under Rule 39(a) filed by appellant on August 3, 1959, motion to dismiss appeal or to affirm the judgment under Rule 39(b) and brief in support thereof filed August 26, 1959, appellant's brief in reply filed September 8, 1959, appellee's reply brief filed on September 15, 1959, supplementary memorandum filed by appellant on October 13, 1959, and the typewritten record on appeal,

It is ordered, adjudged and decreed as follows: The judgment of the Supreme Court of Puerto Rico is affirmed.

By the Court:

(s) ROGER A. STINCHFIELD
Clerk

Approved:
(s) PETER WOODBURY
C.J.